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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE

- - -

FREDRIC RELLER, )
)
Plaintiff(s), )
)
vs. ) Case No. BC261796
)
PHILIP MORRIS INCORPORATED, )
a corporation, et al., )
)
Defendant(s). )

REPORTER'S DAILY TRANSCRIPT OF TRIAL PROCEEDINGS
FRIDAY, JUNE 27, 2003
(PAGES 7520 THROUGH 7646, INCLUSIVE)
A.M. SESSION

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I N D E X


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CASE NUMBER: BC261796
CASE NAME: RELLER vs. PHILIP MORRIS
LOS ANGELES, CA FRIDAY, JUNE 27, 2003
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
TIME: 8:20 A.M.
REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
APPEARANCES: (AS HERETOFORE NOTED)

* * *

(Proceedings commenced outside the presence of the jury, as follows:)

THE COURT: Reller versus Philip Morris, BC261796. The record should reflect we're outside the presence of the jury. Mr. Piuze is present for plaintiff; Mr. Gardner, Ms. Wilkinson for defendant.

Ms. Wilkinson, how can I help you?

MS. WILKINSON: Good morning, your Honor.

My understanding was that all exhibits that were going to be used for the witness on direct or for -- presented affirmatively by the plaintiff would be shown to us before the witness took the stand.

THE COURT: That's true.

MS. WILKINSON: That's been the process the entire time.

Last night, according to Mr. Piuze, and I have no reason to disagree, he sent an e-mail with a new chart for Dr. Cummings.

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THE COURT: For redirect?

MS. WILKINSON: Redirect, which I had never seen, I've looked at this morning, and I object for two reasons. One, it's untimely because of lack of notice --

THE COURT: Well, Ms. Wilkinson, in fairness, when you have redirect and something comes up during direct you need to deal with, there may be some issues there.

MS. WILKINSON: All right. Well, I understand your Honor is invoking the what's-good-for-the-goose-is-good for-the-gander rule, so if that happens to us, I understand.

THE COURT: Okay. And the chart is what?

MS. WILKINSON: It is, I believe, an argumentative chart because of some of the things on it. Obviously the --

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all the different companies, the tobacco products put on here, I don't even know who these are supposed to refer to, these special project scientists, and some of the people we have heard about through the documents.

So, it says it's a "Flow Chart - Special Projects." I would argue it's an argumentative chart and shouldn't be allowed.

THE COURT: Tell me about this, Mr. Piuze.

MR. PIUZE: Sure.

THE COURT: And why is it now arriving rather than before?

MR. PIUZE: First of all, there's two different versions, one, the big one, and this one -- this was also e-mailed to you last night -- and they are two slightly different versions of the same things.

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MS. WILKINSON: Your Honor, these are topics that were already discussed on direct, so it's not a new topic. This is -- as you might remember, I think you allowed one in --

THE COURT: I do. I do.

MS. WILKINSON: So it's not something new. And for all those reasons I think it shouldn't be admitted at this point in the case or even shown on the jury.

MR. PIUZE: Is it my turn?

THE COURT: Yeah. Go ahead, Mr. Piuze.

MR. PIUZE: First of all, just for historical accuracy, when we were discussing the ground rules of this trial, the lawyer, then-lawyer for Brown & Williamson and I joined hands on the record to your Honor saying that demonstratives, as opposed to pure evidence, demonstratives were such that there was a lot of last-minute juggling around and we shouldn't be constrained by some kind of rules, and instead we should just try to keep each other reasonably informed.

That's on the record, the Court accepted it.

THE COURT: Yes, I remember it.

Go on. Next?

MR. PIUZE: Okay. And I kept them reasonably informed last night.

Secondly, as a result of the cross-examination yesterday about how the Scientific Advisory Board was made up of the best people that ever lived in the history of the world, and only those and none others, and anyone who didn't

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win a Nobel Prize was immediately banned from the board, this chart and the smaller one --

THE COURT: I don't think that's exactly what she said, but it was clear there were a lot of well-known people who got money from the CTR.

MR. PIUZE: Correct. And, of course, I'm using literary license to make my point, I don't expect --

THE COURT: Like me, when I said yesterday I'd like to be finished by Christmas?

MR. PIUZE: Yes.

Anyway, as a result of that cross-examination where, gee, we got the greatest scientists in the entire world, et cetera, I want to show graphically now, graphically as opposed to with words, so it will make it easy to understand, how these greatest scientists in the world were bypassed, and the way they -- and Dr. Cummings is prepared to testify that this is a good graphic representation of it.

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These are the general counsel of the individual companies, and I've covered up their names, but I can take this off because these names are in evidence from one of the memos that we've got in evidence right now.

From these general counsel of all of the tobacco companies, they appointed -- they have an ad hoc lawyer, Ed Jacob is frequently an ad hoc lawyer, and that's the ad hoc committee.

And so what happened would be that this man here would decide, with input from the Committee of Counsel,

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these are called the Committee of Counsel --

THE COURT: This is a name that came up yesterday.

MR. PIUZE: Yes. The six general counsel are the Committee of Counsel, they would appoint an ad hoc lawyer, sometimes an ad hoc committee, and this person, a lawyer, would decide how to spend CTR research money on scientific projects even though he is not a scientist and has zero training.

So he would go out --

THE COURT: Didn't that kind of come up in some memo? I thought I saw that in some memo.

MS. WILKINSON: It was, your Honor.

MR. PIUZE: Yeah.

MS. WILKINSON: The one you let in on six general counsel.

THE COURT: Yeah, I understand. But I also remember something about input from general counsel or a counsel. An attorney anyway.

MR. PIUZE: So this ad hoc lawyer would go out and round up scientists, he'd find them, to do off-the-books research, and we had an example of that yesterday in Tacoma.

THE COURT: The guy in Tacoma. Yeah. Okay.

MR. PIUZE: In Tacoma.

And all of these people now going off -- the Nobel Prize winners don't know anything about this, the Nobel Prize winners wouldn't be doing this kind of stuff, this off-the-books research would be okayed by a former PR guy who rose to the level of the president of CTR.

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MS. WILKINSON: Look at that, your Honor.

MR. PIUZE: Yeah. W.T. Hoyt, with his public relations background.

THE COURT: I remember. You went through it twice.

MR. PIUZE: And that isn't argumentative, that's the truth. W.T. Hoyt was a public relations guy, and he was the one who was doling out the money on the side for these special project scientists.

This is a representation to show the jury how this all bypassed the Scientific Advisory Board. And as a result of the cross-examination that occurred yesterday, I think the jury should be shown this graphic representation so they can understand it.

And that's all it is, is a graphic representation. It's not new evidence. The smaller one is a small version, a slightly different version of the same concept.

THE COURT: Mr. Piuze?

MR. PIUZE: Yes.

THE COURT: You know, you told me that the special projects bypasses the Scientific Advisory Board.

MR. PIUZE: Right.

THE COURT: And I'm not really making a judgment

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call one way or another, but, gee whiz, what's wrong with doing additional types of research in addition to whatever the Scientific Advisory Board wants?

I guess, well, I come from a different background, Mr. Piuze, and I'm all for scientific

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experiments, however they might be founded, as long as it's above board and relatively legal, you know, not done by the Mafia in the back rooms deciding how to build a better cocaine lab or something like that. But I mean assuming that it's reasonable research, what am I missing here?

MR. PIUZE: You're missing that the lawyers --

THE COURT: Did it.

MR. PIUZE: -- for the tobacco companies were deciding what research was to be carried on. Lawyers. Lawyers were deciding what kind of scientific research to fund.

THE COURT: In addition to whatever the Scientific Advisory Board did.

MR. PIUZE: The Scientific Advisory Board would pass on --

THE COURT: Certain types of --

MR. PIUZE: -- certain requests for grants.

THE COURT: Okay. And then another hand or arm or whatever was deciding on special projects. And?

MR. PIUZE: In other words, your Honor, like the one we heard about yesterday, to check the level of asbestos in the general -- not in someone's apartment building --

THE COURT: In the air.

MR. PIUZE: -- but in the air of Tacoma and Seattle to see if we can find an excuse why people are getting lung cancer? That's against the stated goals of this organization. Exactly opposite of what it's supposed to

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be doing. It's not guarding people's health, it's looking for a cover-up. That's exactly what it is. It's lawyers looking for a cover-up.

Now, on redirect -- so, thus far, and I say respectfully, the Court's only comment, is: So what. But okay, so if it falls on its face and the jury thinks so what, so what. But that isn't the question here. The question is why can't I use it?

THE COURT: Mr. Piuze, I'm not saying that. I'm just -- I'm not saying you can't use it, the information, it's kind of already before the jury, because I remember that from yesterday; it's just that -- it's your case, you do with it what you want. Just, from my standpoint, as an innocent bystander? This has kind of, for me, a so what effect. But. . .

Which chart do you want to use? The big one or the little one?

MR. PIUZE: The big one.

MS. WILKINSON: Your Honor?

THE COURT: Uh-huh. Yes.

MS. WILKINSON: My problem with it is that it is argumentative. The other one I don't believe has this characterization --

THE COURT: Yes, it does: "Tom Hoyt, Public Relations."

MS. WILKINSON: And I would object to that. I mean, that is a characterization and it's intended to be argumentative --

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THE COURT: Mr. Piuze, you can take out the public relations background under the name Mr. Hoyt; right?
MR. PIUZE: Excuse me. There's evidence in this record --
THE COURT: I know. You can do that, can't you? Just that little phrase?
MR. PIUZE: Sure.
THE COURT: Thank you. You can use it.
MS. WILKINSON: That's all, your Honor.
THE COURT: Thank you.
MR. GARDNER: Actually, your Honor requested a page.
THE COURT: Yeah. Let me look at it.
Can I look at it during the --
MR. GARDNER: Oh, absolutely. We don't need it this morning.
THE COURT: The objection was at the top, and I couldn't find the question there.
MR. GARDNER: Right. I think the page that's missing is in the -- oh, I'm sorry, I didn't realize we were on the record.
The page I believe that the Court needed is in the very back of this.
THE COURT: Okay.
All right. Let's bring in the jury.

(Recess taken)

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CASE NUMBER: BC261796
CASE NAME: RELLER vs. PHILIP MORRIS
LOS ANGELES, CA FRIDAY, JUNE 27, 2003
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
TIME: 8:36 A.M.
REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
APPEARANCES: (AS HERETOFORE NOTED)
* * *

(The proceedings resumed in open court, in the presence of the jury, as follows:)

THE COURTROOM ASSISTANT: Everyone rise, please, and face the flag.
In the presence of the flag of the United States, emblem of the Constitution and of freedom and justice for all, Department 324 of the Superior Court of the State of California, for the County of Los Angeles, is now in session. The Honorable Victoria Chaney, Judge, presiding.
Please be seated and come to order.
THE COURT: Good morning everybody.
JURY RESPONSE: Good morning.
THE COURT: Ms. Washington, you can stay until 3:15 today? Remember we were talking about adding another half-hour on? I know you had your reunion.
JUROR WASHINGTON: That would be okay. I can make it if I leave at that time.

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THE COURT: Okay.
All right. Reller versus Philip Morris, BC261796. The record should reflect that all 12 jurors, the four alternates are present. Mr. Piuze is here for

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plaintiff, Ms. Wilkinson, Mr. Gardner for Defendant. Dr. Lewis is present in court.

Dr. Cummings is present on the witness stand. Sir, you're still under oath.

A couple of things, folks. I'm having the boss, the scheduling genius over here, they don't let me do anything in terms of scheduling, they hand me things, you know, here, you have to do this next, Judge, or read this. So anyway, they're going to figure out the break times, I've asked if we can not go more than an hour and a half at any one time, I'd appreciate it. We'll be stopping at 3:15 today. That's number one.

Number two, during the trial, some of the attorneys may not be able to be present because they have to work with other witnesses or work on other evidence, so do not be prejudiced against any party if there is -- if one of the attorneys is absent.

You've kind of seen that already with Ms. Matthews, who you've met who has kind of come and gone and then come back again and then gone again. So just be aware of the fact that the attorneys may not always be physically present, but they're here in spirit and they're working on your case. It makes things go more smoothly.

With that, Dr. Cummings, you're still under

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oath.

And Ms. Wilkinson, the clock is ticking.

MS. WILKINSON: Yes, ma'am.

KENNETH MICHAEL CUMMINGS, Ph.D.,
having been previously duly sworn, was
examined and testified further, as follows:

CROSS-EXAMINATION (RESUMED)

BY MS. WILKINSON:

Q. Good morning Dr. Cummings.

A. Good morning.

Q. Thank you for coming back today.

You had to reschedule your flight, didn't you?

A. I did.

Q. I have a few more questions for you.

Yesterday we were talking about all the work you have done to learn about the Council for Tobacco Research and TIRC and the Tobacco Institute; correct?

A. Correct.

Q. When we were talking about the 23 million documents, and we used this as an example of just 1/10,000th of the documents, right, that might be available to you, did you say that you've read about -- yourself now, not your staff, but you've read about 10,000 documents?

A. I think I may have said that. I was asked -- I don't know exactly the number of documents that I've

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read, but it's quite a few. I've been doing this for quite a number of number of years.

Q. And the rest of your staff, the people that work for you on this, are actually cataloging the documents; right?

A. That's right. They are reading them, I have librarians who create abstracts, like when you go to the library, a card catalog, that was the intent, and that was one of the ways for selecting documents, actually,

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for some of the papers; it helps to have that card catalog.
Q. And part of the reason they're cataloging those for you is so you can go and find certain documents if you're researching a particular topic; right?
A. Not only myself, but other investigators who we are working with. So there are really quite a large network of people who are looking at these documents. The National Cancer Institute has funded probably 12 other investigators around the country to do this kind of work.
Q. And so you could put in search terms, eventually you hope, and be able to pull up certain documents. Is that the idea?
A. That's right.
Q. Like you do on the Internet if you're searching for something?
A. That's right.
Q. And do you know before we came into court yesterday -- if I could have the Elmo -- if you had ever looked at this document that we introduced yesterday, which

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was 229, this was the December 10th through 12th, 1965 board meeting of the Scientific Advisory Board, and just to refresh your recollection, we had read about special projects?
A. I think I indicated yesterday that I didn't recall having seen this, but that doesn't mean that I haven't seen it.
Q. Right. A lot of documents that you've read.
A. That's right.
Q. Were you aware then, based on this document or some other, that the Scientific Advisory Board had been advised that in addition to the research they were doing, the tobacco companies were going to do some special projects?
A. Well, that's one meeting in 1965, it doesn't mean that they were advised, and my indication is that not all the scientific advisers were -- advisory board members were fully aware of the fact that there were other research projects being funded and what those projects necessarily were.
Q. Dr. Cummings, I asked you a specific question. I realize you have a lot more you want to say this to jury, but my first question was did you know that the Scientific Advisory Board had been told that special projects would be done in addition to the research that they were approving?
A. I didn't recall seeing that document, no.
Q. So you didn't know that before you came in to talk to this jury yesterday.

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A. I don't recall seeing that particular document.
Q. Okay.
Now, you have looked at special projects, though, in your research; right?
A. Yes, I have.
Q. And I believe you've said that special projects were conducted by outside researchers who didn't always work for the tobacco industry; right?
A. That's correct.
Q. And those outside researchers also came from very prestigious research institutions; right?
A. They did.
Q. And many of those research projects, not just all the Scientific Advisory Board projects we were talking

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about yesterday, but many of those specific projects were actually co-funded by other organizations other than the tobacco companies; right?
A. Well, what do you mean by "co-funded"?
Q. Well, we talked about that yesterday, didn't we? We talked about some of those articles we introduced, and sometimes people who were doing research were just funded by the CTR; right?
A. That's right.
Q. And sometimes they got funding from multiple sources, like the National Cancer Institute or the public service -- I mean the Public Health Service or National Cancer Society; right?
A. Yeah, but I think it's misleading to use

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the word co-funding, which I believe I described in my deposition actually in this case, because co-funding, what I think of it, involves where you have a project and you go out and you get multiple sources of funds to support that particular work, and what typically you see is investigators have many different grants, if they're good scientists, and they may have people in their labs who are supported off of different grants, and when they write the papers they typically report all their funding sources. That's the convention that we use at my institution.
Q. Well, but the point is that people who get funding from multiple sources, they're not just being supported by the tobacco company in the research that they do; right?
A. No. And, in fact, many of the scientists who were supported had received grants from other sources.
Q. And that's important because you would criticize someone who was doing research who just was receiving money from the tobacco companies because you would think they were influenced only by them because they were depending on them for their money; right?
A. No. Not necessarily, you wouldn't.
Q. So even if you just got money from the tobacco companies, in and of itself that wouldn't be improper.
A. Well, I wouldn't take money from the tobacco companies, and my institution has a policy that they

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don't take money from the Council for Tobacco Research --
Q. That's true now. That wasn't always true, though.
A. That's true now. Many institutions have that policy: Harvard, Johns Hopkins University.
Q. And many, many people do take money from tobacco companies.
But that really wasn't the point of my question, was it?
A. Well, actually many don't. I would say many, many more scientists today do not take money from the tobacco companies than do.
Q. Dr. Cummings, we were starting with the question about whether you thought -- not whether you would take the money, which you've just volunteered to this jury to tell them what your position is; right?
A. Yes.
Q. You're not objective when it comes to tobacco companies, are you?

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A. I think I am.
Q. Oh, you are. You're totally objective. You're coming in here, you don't have any preconceived bias against Philip Morris or any other tobacco company; right?
A. No, I come in with the evidence that I've accumulated in my 22 years of work at a cancer center, and I certainly have formed opinions which I've shared during my testimony here.

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Q. And you come in without having read many of the documents that give some context to what happened over the last 50 years; right?
A. Yes, I acknowledge I have not read every document.
Q. All right. Let's get back to the real issue here, and the issue is, with regards to whether you would take the money, you wouldn't criticize someone in and of themselves for taking tobacco money.
Is that what I heard you say?
A. That's right.
Q. It depends on whether the tobacco company, or anybody funding their research, influences their research; right?
A. Well, it depends on which company.
Q. But you wouldn't expect, or you would not tolerate, or wouldn't approve of anyone taking money and letting the people funding the grant influence their research; right?
A. It shouldn't be influenced, correct.
Q. It should be independent; right?
A. That's right.
Q. They should come to whatever conclusions the data will let them come to.
A. Right. They should be able to share those conclusions however they wish to share them.
Q. And they should publish them if they choose to.
A. Correct.

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Q. And if they do, if somebody says don't put that certain sentence in, they should get to make that decision on their own if they --
A. Correct. They shouldn't be told to change sentences. They should be able to use their own judgment.
Q. But the most important thing is that they do it.
A. Right.
Q. I mean, even if someone says take that sentence out, I'm sure you've had discussions with people you've written articles with debating on how the articles should be written, but ultimately you're responsible for whatever is published under your name; right?
A. Ultimately you are responsible for what you publish, yes.
Q. And you would not compromise your integrity by letting someone tell you not to put something in if you thought it was important.
A. I try not to you. I certainly have things that I've published and I've gone back and read, and as I've read over it I said, you know, in thinking about it, I wouldn't have written it this way, it was a little unclear. So that happens.
Q. That happens to everybody; right? Your point

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is, you use your best judgment at the time, but sometimes you go back and you may know more, you may have a different perspective, and you might say: I might not have written it exactly that way.

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But that's not because somebody influenced you improperly; right?

A. You shouldn't be influenced by the funding agency in particular in any way whatsoever if there's a claim of independence.

Q. Okay. Now, you're not aware of any specific criticism that any of the special project research was of a poor quality; correct? Criticism I asked you about.

A. Yes. I have -- I believe I criticized one of the special projects when I was asked about it in my deposition.

Q. Well, let's look at what you said on April 28th of this year. At Page 210, it's MC.27, Lines 19 through 24, and you were asked:

"Now, are you aware of any criticism that's been made in the peer-reviewed literature, any criticism that's been made of any special project research as being of poor quality?"

You answered: "I'm not familiar with any specific criticism."

Was that the question that you were asked and the answer that you gave?

A. Correct. I went on to explain --

Q. Hold on. I'll ask the question and let you explain it.

A. Sure.

Q. That was asking you whether you were aware of any criticism in the peer-reviewed literature, saying this

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was not proper.

A. That's right.

Q. And you're not aware of any of that criticism; correct?

A. Well, I did give an example later, as I recall.

Q. Go ahead. You can give the example right now.

A. Dr. Feinstein, I believe I discussed, he was a recipient of special project money and also later was on the Scientific Advisory Board of the CTR, and I commented on a paper that he had published in the Journal of the American Medical Association that was criticized because of poor science, actually. He published it in a peer-reviewed journal, there were a number of responses that appeared, editorial responses from a number of investigators, including myself, criticizing the paper.

Q. So that was very recently.

A. No, I believe that was -- I'd have to go back to my C.V. to know the timing of that, but I believe it was late eighties?

Q. And that's the only specific example you gave; right?

A. That was one that I recalled off the top of my head, and he was a special project recipient. I didn't know he was a special project recipient until I was able to look at the special project files.

Q. And if we went back and looked at all the research funded by the CTR, do you think you could go back and find some criticism of one or two or even a couple of

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those research projects?
A. I'm in the process of doing that, actually.
Q. So you're looking for that right now; right?
A. Yes, I am.
Q. Hoping to find that; right?
A. No. Because you asked me at the question, so I'll go back and look.
Q. Well, and as you said, you could go back to research over the last 40 years and criticize articles that have been published in peer-reviewed journals; right?
A. Yes.
Q. That happens, doesn't it, in science?
A. Sure it does. Absolutely.
Q. It happens everywhere.
Now, you're not aware of any researcher who conducted special project research who complained of being subjected to undue influence from the tobacco industry; correct?
A. Special projects only? Or CTR projects?
Q. Special project research.
A. No. Special projects, no.
Q. Now, you know from the reading of some of the documents you've read that CTR was funding research since about 1955; right?
A. Correct.
Q. And you know, don't you, that over 600 of the CTR-sponsored research articles that were published or articles published based on that research were cited by

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the Surgeon General in various smoking and health reports since 1964; correct?
A. Yes. Out of the 60,000 that are in the data base of articles that have been cited in Surgeon General reports, yes, there are 600.
Q. So the four we gave yesterday were just an example.
A. Yes.
Q. Okay. That wasn't the universe, that was just an example from the very first report.
A. Correct.
Q. Okay. Now, yesterday we also talked about the Gallup polls. You said you're aware of the polling that was done about smoking and awareness; correct?
A. Yes.
Q. And we had talked about the 1990 poll, but I think we stopped with the 1954 poll -- which is quite different, isn't it? The 1954 poll?
A. Yes, it is.
Q. All right. Let's talk about that for a minute.
Your Honor, I need the next number for the blow-up.
THE COURT: Hold on. Although I bet my fellow judges over here know. 242.
MS. WILKINSON: 242 Ms. Simmonds tells me.
THE COURT: There you go. Whoever said that is correct. 242.
And I'm sorry, what was the exhibit?

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MS. WILKINSON: This is the blow-up to Exhibit 241.
THE COURT: Thank you.

(Exhibit No. 242 was marked for identification)

http://legacy.library.ucsf.edu/tid/bqq37a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/yqgl0001

MS. WILKINSON: Maybe I should put this on here.
Q. Okay. Dr. Cummings, we had just started talking about this yesterday, and I think you were telling us what this question was asking in 1954, right here:
"Have you heard or read anything recently to the effect that cigarette smoking may be a cause of cancer of the lung"; correct?
A. Correct.
Q. Now, that is just asking them if they've heard about it; right?
A. That's right.
Q. Not asking them whether they believe it; right?
A. Correct.
Q. Or whether they're aware of scientific proof.
A. That's right.
Q. It's just saying have you heard about it out in the public discussion; right?
A. That's right.
Q. And 90 percent of the people that were polled said yes; right?
A. Right. It was 83 percent in a poll that was done in January of that year, right after the Frank Statement.

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Q. Are you now talking about a different poll than we're looking at right now?
A. It was a Gallup poll, it was done in January of that year, 1954, right after the Frank Statement, it asked the same question, and 83 percent responded yes, and they repeated the poll and --
Q. So the good news is -- since you want to talk about your other poll now, the good news is, this was done in June, right? Later.
A. That's right.
Q. And so within six months of the Frank Statement, 90 percent of the people say they have heard about it; right?
A. Right.
Q. Within six months.
That's not that long of a time period, is it, Dr. Cummings?
A. That's right. Actually, right after all the public relations activities of TIRC.
Q. So, the public relations activity of the TIRC are you saying actually helped people realize that there was dangers?
A. No, that doesn't say anything about dangers. This just says have you heard or read anything recently to the effect that cigarette smoking may be a cause of cancer of the lung. It's just whether you have heard or read anything that says it may. That's all it says.
Q. Well, I used the word "danger." You're not

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going to disagree that it may be a cause of lung cancer is a good thing; right? That's a danger, isn't it?
A. I think the question speaks for itself. It says: "Have you heard or read anything recently to the effect that cigarette smoking may be a cause of cancer of the lung?" Or it may not be. Have you read anything.
Q. And you're not here to tell the jury that you know whether people thought it was or was not back in the 1950s, are you?
A. Sure. I'll be happy to tell you what the polls

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said about whether it was or was not, because the Gallup Poll asked some of those questions, as well.
Q. And over time it became more and more well known, didn't it, that people knew that smoking was a cause or caused lung cancer; right?
A. One of the causes I believe was the exact wording of the question that you showed yesterday for the 1990 Gallup poll, and that did increase over time.
Q. And that is the truth; right? It is one of the causes.
A. It is the major cause by far and away.
Q. Dr. Cummings, we talked, when you first started to testify, about your training to not answer the questions from a tobacco company representative.
Do you remember that? You've received that training, haven't you?
A. To answer questions from tobacco representatives?

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Q. And how not to answer their direct question and say what you want to say?
A. No. I attended a meeting where they talked about the issues of basically how to do an interview, because scientists aren't trained to do interviews, so they -- you know, they had some people in there. It wasn't a training session. I didn't participate in a training session.
Q. And in that material that you got, it said you don't have to answer the question, didn't it?
A. It did say that.
Q. Yeah. Well, let's stick with answering the questions here.
You said you're going to answer the questions in the courtroom that you get asked; right? You said you'd do that at the beginning.
A. I'm trying to answer your questions.
Q. And the question was, does smoking -- is smoking one of the causes of lung cancer.
A. It is.
Q. Is it the major cause?
A. By far and away, yes.
Q. All right. Okay.
So when the Gallup Poll asked people if they thought it was one of the causes, they were asking them an accurate question, weren't they?
A. They were asking them a question, is it one of the causes, yes.

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Q. And there were polls conducted over the years since 1954; right?
A. Well, you're referring to the '90 poll or the 1954 poll?
Q. In between. There were polls in 1969; right?
A. Correct.
Q. And there were polls in, what, 19 --
A '77.
Q. 1977 and --
A. '81.
Q. And then we looked at the poll, there's '81, there's 1990; right?
A. That's right.
Q. And over the years, the actual awareness of the dangers of smoking attributed to smoking have gone

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up and up; correct?
A. The percentage of people who answer the question, "In your opinion is cigarette smoking one of the causes of lung cancer?" has increased over time.
Q. Well, that isn't the question that was asked in 1990, in Exhibit 240, is it?
Yes or no, Dr. Cummings? Is that the question that you just stated that was asked in the 1990 poll?
A. Yes. It's the bottom question right there:
"In your opinion, do you think cigarette smoking is one of the causes of lung cancer?"
Q. You're right. I'm sorry. But it also was asking a more general question, wasn't it? Getting to
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the issue you're trying to talk about:
"Do you think that cigarette smoking is or is not harmful to your health?" Right?
A. That's a different question that was asked, yes.
Q. And even more people, 96 percent, said yes; right?
A. That's right. But they don't define "harm."
Q. And you told us yesterday that even when you tell people all the details about the harm, that does not predict whether someone will quit or not; correct?
A. Well, it's a necessary thing, yes. People have to know the risks --
THE COURT: Dr. Cummings, the question was whether it predicts that somebody will stop smoking, not whether it's necessary. Please pay attention to the question.
THE WITNESS: Well, I think the answer would be yes. I may have misstated it yesterday. You have to know the risks.
Q. BY MS. WILKINSON: That wasn't my question.
The question was, does it predict whether someone will quit or not?
A. It is a factor, yes. It is a predictor.
MS. WILKINSON: Your Honor, I have no further questions for this witness.
THE COURT: I think he's answered the question, as much as you're going to get.
MS. WILKINSON: I think you're right. Thank you.
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MR. PIUZE: Is it my turn?
THE COURT: Are you done?
MS. WILKINSON: Yes.
THE COURT: Oh. It's your turn. The clock is ticking for you.

REDIRECT EXAMINATION

BY MR. PIUZE:
Q. Do you think that it's correct over the period of time, more and more people knew that smoking caused lung cancer?
A. Yes.
Q. Was there a Gallup poll taken on when Philip Morris knew that smoking caused lung cancer?
MS. WILKINSON: Objection. Argumentative, your Honor.
THE COURT: Sustained.
THE WITNESS: A Gallup poll --
THE COURT: Don't answer.
THE WITNESS: Oh, I'm sorry. I'm sorry.

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Q. BY MR. PIUZE: Slow down.
A. I will try.
Q. The airplane doesn't leave until 12:00.
THE COURT: We promise we'll get you out before then. Okay?
THE WITNESS: Thank you.
Q. BY MR. PIUZE: When did Philip Morris officially announce that smoking caused lung cancer?

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A. The earliest I've seen is October of 2002 -- or 2000, I believe. 2000. October 2000.
Q. If, according to the Gallup poll, more and more just regular Americans knew that smoking caused lung cancer through the period of passage of time, how come it took Philip Morris so long to figure it out?
MS. WILKINSON: Objection.
THE COURT: Calls for speculation. Sustained.
Q. BY MR. PIUZE: Okay. I left my notes in the trunk, they were just brought up to me. So here we go.
As far as a conflict of interest is concerned, you stated yesterday on direct examination, and you were asked on cross-examination whether someone on the Scientific Advisory Board whose job it was to decide which scientists got the money, was also himself or herself directly getting the money, you said you thought that was a conflict of interest.
Do I have that right?
A. Correct.
Q. Very briefly, why is that a conflict of interest?
A. Because the people who are making decisions on which grants to fund shouldn't be making decisions on their own grants, which is, in essence, a huge conflict of interest.
Typically -- well, on review committees that I serve on, you don't apply for the grants during that period of time you serve. So, for example, when I served the three

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years on the peer-review committee for the American Cancer Society, I did not apply to the American Cancer Society for any grant funding.
In addition, at my institution, if somebody else, maybe even -- I have a lot of people that work at my place -- applied, and the grant came to the committee, I would excuse myself from any discussion or any hearing of whether that grant is, you know, critiqued, how it's critiqued and scored.
Q. Would a bottom-line kind of thing be that if you were sitting there with your buddies on the Scientific Advisory Board, they are more likely to give you thumbs up on something that wasn't worthwhile?
A. Sure. You make personal relationships on the board, as was indicated by some of the letters, actually, that we saw yesterday.
Q. Was one of your criticisms of the way this operation was set up, that some of the people on the Scientific Advisory Board were getting direct money basically that their buddies were passing on?
A. Yes, some every year that they served on the Scientific Advisory Board, and some served for over two decades.
Q. Thank you.
Next. Yesterday on direct -- not on direct

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examination, but on cross-examination, you were asked whether or not you thought that being on the Scientific Advisory Board of this particular organization, CTR,

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and being a government employee at the same time was a conflict of interest, and you answered yes.

A. Yes.

Q. You still believe that.

A. I do.

Q. Okay. Now, in one of these exhibits that was shown, and I think it was for Hooley, I'm not positive, but I think it was for Hooley, in asking permission from the boss to go on the CTR, the person himself raised the issue of conflict of interest; is that right?

A. Yes.

Q. Were there many people in the government, at the NCI, organizations like that, that turned down invitations to sit on the Scientific Advisory Board of the tobacco industry here because they believed it was a conflict of interest?

MS. WILKINSON: Objection only to foundation, your Honor.

THE COURT: Sustained. Do you want to lay a foundation as to how he would know that, please?

MR. PIUZE: Sure.

Q. First of all, don't answer yes or no, but do you know the answer to that question?

A. Yes.

Q. How do you know the answer to that question?

A. I've read it in documents from the TIRC. Early on there were --

Q. So stop right there, please.

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A. Okay.

Q. So based on your literature review and your literature analysis and your document analysis, that's how you know the answer to the question.

A. That's right.

Q. Okay. Were there people over in the government working for the Public Health Department, one of the subbranches, who said we think it's a conflict of interest, we're not going to go on that board?

A. Yes.

Q. Now, you mentioned this morning, I guess, at Roswell Park, Harvard University Medical School, Johns Hopkins Medical School and many other unnamed-for-now medical schools, have they all, as an institutional policy, said: We don't want anything to do with your money and your grants?

A. Yes, they have.

Q. Do you want to change your testimony about thinking it's a conflict of interest working for the government on tobacco control issues and taking money from the Scientific Advisory Board?

A. I think it's a conflict of interest.

Q. Yesterday it was brought out that -- several times, that four people who at one time or another sat on the Scientific Advisory Board won Nobel Prizes.

You remember that, of course.

A. That's right.

Q. Are Nobel Prizes awarded for an individual

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work, or a body of work over a lifetime?

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A. Actually, just to be correct, what was presented were CTR grant recipients, not necessarily members of the Scientific Advisory Board.
Q. Sorry. Thank you for the correction. So let me set the whole thing up again.
There were four CTR grant recipients who the jury and you were shown had won Nobel Prizes.
A. That's right.
Q. Are Nobel Prizes awarded for a specific piece of work, or for a body of work over a long period of time?
A. Usually a unique scientific discovery that often reflects a body of work over a long period of time.
Q. Did any of these CTR scientists, people who got grants from the CTR, receive their Nobel Prizes because they had discovered that smoking causes lung cancer?
A. No.
Q. Did any of these CTR grantees that won the Nobel Prize win the prize because they had discovered that smoking was injurious to health?
A. No.
Q. Did any of these CTR grantees that won Nobel Prizes win the Nobel Prizes because they figured out there was something wrong with cigarette smoking?
MS. WILKINSON: Your Honor, I'm going to object. That's argumentative. He's made his point. Cumulative.
MR. PIUZE: All right, your Honor. I'll take that

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as a stipulation. I've made my point. Next question.
Q. You mentioned yesterday in answer to a question on cross-examination that some of these well-respected scientists were doing basic research.
Do you remember that?
A. Yes.
Q. What did you mean when you said that?
MS. WILKINSON: Your Honor, I'm going to object. He's not qualified to talk about the nature of the research. He told us that.
THE COURT: True, but this is a question of what he meant. So he should be able to interpret what he meant. Overruled.
Answer the question.
THE WITNESS: Basic research, as the way I defined it, was looking at the basic mechanisms of -- at the cellular level, predominantly, of diseases, a variety of diseases, cancer, heart disease, some of those that were in that list that was shown in the '89 annual report.
Q. BY MR. PIUZE: So what's wrong with looking at it from a cellular level?
A. There's nothing wrong with doing that research, it's important research, just not directly related to the question and the purpose that the organization was founded on, which was to find out the alleged -- the relationship that was alleged between tobacco use and various diseases that had been linked to cigarette smoking, especially lung cancer.

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MS. WILKINSON: Your Honor, I'm going to object and ask to strike that last part. He's not qualified to make those statements.
THE COURT: Sustained. The jury will disregard the answer.
Q. BY MR. PIUZE: In your view, based on your

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literature review and analysis, was most of the research that was done not really on point to does smoking cause lung cancer?

A. Based on my review of the literature, based on my review of the abstracts published in annual reports, and based on my survey of CTR grant recipients where I asked them specifically to indicate to me in a survey whether smoking -- whether their research had anything to do with the relationship between smoking and disease, only one out of six of those recipients said that their research currently or ever had to do with that. So that was the basis for my opinion.

Q. Thanks.

There was a brief allusion to that survey yesterday during cross-examination. Why did you do the survey?

A. I did the survey because I was looking at the annual reports, and a companion organization on smoking and health in a different country, Australia, funded by the tobacco industry, their Scientific Advisory Board had said the evidence is conclusive, it says that smoking causes lung cancer, but in the United States that had never been stated;

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I knew scientists who were getting grants from CTR, I knew they believed that smoking caused lung cancer, so I wanted to test the hypothesis, I did it as a project during the summer with a student who was working with me, we designed a questionnaire, we sent it out, and we published the results of our findings.

Q. Did you send it out to everyone who received money from the CTR to do research in 1989?

A. We sent it out to all CTR grant recipients that were in the United States that we had addresses for, which was several hundred people -- well, a little under 200 people.

Q. What was your response rate?

A. It's published in the article, it was about 44 percent, 45 percent, something along those ranges, which is pretty typical for a mailed questionnaire to do, and scientists and institutions, they don't tend to respond too often to surveys.

Q. And out of everyone who responded, the vast majority -- I mean, what was the percentage again?

A. The percentage for response rate?

Q. No.

A. No, okay.

Q. The percentage who did some research that had to do with smoking and health.

A. Oh. There was only one out of six who indicated their research -- we asked them currently and then we said ever in your career, because we thought that

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CTR would be selecting grantees whose research had something to do with smoking and health, and only one out of six indicated that their research ever in their career ever had to do with smoking and health. So it's a very small percentage. One out of six.

Q. I can figure that percentage, but. . .

A. I'm not good at math. You learned that last time.

Q. Okay. Yesterday we talked about the Committee of Counsel. Do you remember that?

A. Yes.

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Q. On direct and cross.
I'd like to show you a chart here that I'm just going to have to work on for a second.
THE COURT: Would you like me to entertain?
MR. PIUZE: Sure.

(Discussion held off the record)

MR. PIUZE: Sorry to interrupt.
THE COURT: Okay. You're ready to go? 243?
MR. PIUZE: 243.
THE COURT: And this is a flow chart?
MR. PIUZE: Yes, it is.
THE COURT: Okay.

(Exhibit No. 243 was marked for identification)

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Q. BY MR. PIUZE: You've seen this before.
A. Yes.
Q. With your help now, and this chart, will you be able to show graphically how lawyers got to choose what kind of research was being done, to a great extent, with the CTR money?
A. Yes. I can do that. I think that diagram indicates the organizational structure of the CTR organization.
Q. Let me stop you for a second, please, if I could. I want to use the easel so we can all see this; I won't have to hold it, it will be a lot easier.
MS. WILKINSON: Thank you Mr. Piuze.
Q. BY MR. PIUZE: There's some tape there, one, two, three, four, five, six pieces of tape. So there won't be any mystery, underneath those pieces of tape are the names of the general counsel of the various tobacco companies.
A. Right. Or the nominated counsel. Sometimes it was assisting counsel who was elected or nominated by their particular company on an annual basis to serve on what they call the general counsel group or what I referred to yesterday as the Committee of Counsel.
Q. Okay. Now, was the Committee of Counsel, therefore, made up of a boss lawyer from each of the major insurance companies -- I'm sorry, tobacco companies?
A. It was made up of a group of attorneys representing each of the major tobacco companies.

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MR. PIUZE: I don't know where that came from.
THE COURT: And the jury will disregard it. That plays absolutely no role here.
Q. BY MR. PIUZE: You mentioned yesterday ad hoc committee or ad hoc lawyer. Do you recall that?
A. Yes.
Q. Does that chart show an example of an ad hoc lawyer?
A. Yes, it does.
Q. Who?
A. On this particular chart it's Mr. Ed Jacob.
Q. And sometimes was he the ad hoc lawyer?
A. He was frequently represented on the ad hoc committee.
Q. What was the connection between the Committee of Counsel and the ad hoc lawyers committee, please?

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A. Well, the ad hoc committee basically was a subcommittee of the Committee of Counsel, they were private attorneys who were hired by the attorneys for the tobacco companies, so each company tended to have their own private attorney, and they served, as illustrated here, to go out and find scientists to do special projects or to serve as witnesses and also do Congressional testimony, write literature reviews.

So that's -- that was their main task. They would go out and do directed kinds of identification of scientists who would do research work on specific projects.

Q. Yesterday there was a series of three documents

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that had to do with a pathologist in Tacoma dealing with a lawyer, originally an outside lawyer who went and became Philip Morris house counsel.

Do you remember that?

A. Yes. Mr. Holtzman.

Q. Is that an example of a special project?

A. Yes. Mr. Holtzman worked for a private law firm when he first contacted Dr. Larson -- Conboy I think was the first name of the law firm -- and later he went to work to work for Philip Morris, but he was out -- in fact, the letter from Dr. Larson to Mr. Holtzman says "After your visit." He was actually commenting on the fact that Mr. Holtzman had traveled I believe from New York from his law firm out to Tacoma, Washington, to meet with Dr. Larson to talk about his research.

Q. Now --

THE COURT: Mr. Piuze, can you hold that thought for half a second? I have another little problem here. So I'll be back. I just got an e-mail I need to attend to.

MR. PIUZE: So is that clock off?

THE COURT: It is. And I'll even subtract a minute because of my request. Okay?

MR. PIUZE: Thank you.

THE COURT: I don't want anybody to say I'm cheating anybody else off their time.

MS. WILKINSON: And people can talk, your Honor?

THE COURT: You can talk about anything other than the case. Okay?

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I'm sorry. I'll be right back.

(Recess taken)

THE COURT: Okay. You guys ready to go?

Mr. Piuze, you're on; right?

MR. PIUZE: Yes. Thank you.

Q. Yesterday, one of the documents that was shown was a 1978, if I'm not mistaken, internal memo over at Philip Morris in which the general counsel for most of the tobacco companies were present along with several chief executives from Philip Morris.

Do you remember that?

A. Yes. A document written I believe by Dr. Seligman.

Q. Seligman. Correct.

And within the document they were talking about the history of CTR being set up as a shield and a front organization.

Do you recall that?

A. Yes.

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MS. WILKINSON: Objection. Your Honor, the document speaks for itself.
THE COURT: Sustained.
Q. BY MR. PIUZE: Do you agree with Dr. Seligman's memo in which the industry itself said that CTR was set up as a front organization for it?
A. Yes, I do.

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Q. Do you agree with the industry statement that the CTR was set up as a shield for it?
A. Yes, I do.
Q. Do you agree with the tobacco industry's own statement that it was set up to have people get ready for litigation and hearings and act as witnesses?
A. Yes, I do. Particularly special projects.
Q. Now, these special project scientists that were picked by tobacco company lawyers to look into whether or not smoking was really bad for your health, these special project scientists, did they have to get approved by the Scientific Advisory Board?
A. No, they didn't.
Q. And did they have to get approved by Nobel Prize winners?
A. No.
Q. Aside from getting approved by tobacco company lawyers, who else did they have to get approved by?
A. Well, the ad hoc committee would make their recommendations, they'd find the scientists, and they'd bring the proposals, and they were approved by the council, and they were administered by Mr. Hoyt, the executive director of CTR, or Dr. Hockett, and you often had lawyers, often the ad hoc lawyers who worked for outside firms representing the tobacco companies, serve as monitors of the research that was going on, that they had funded.
Q. Now, Dr. Hoyt -- excuse me, not doctor. Mr. Hoyt?

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A. Wilson Hoyt, yes. Mister. He used to be an account executive at Hill and Knowlton.
Q. So here's my last conflict of interest question. Do you think that tobacco industry lawyers and a former account executive for Hill & Knowlton who was serving as a big wheel in the CTR, choosing scientists to look into whether or not tobacco caused health problems, was a conflict of interest?
A. I think it's a conflict because it did not go through a traditional peer review process to select a scientific study of high quality, and they were selecting them for the purposes primarily to identify alternative causes of the diseases that it had alleged to be related to smoking that would be helpful to them for their public relations and for their litigation.
Q. It was pointed out to you this morning in a question, I think, that the 1964 Surgeon General's report acknowledged that there had been 600 different articles written with some sort of CTR funding that it had considered and reviewed.
Do you remember that?
A. Yes, I do.
Q. I believe I heard you say 600 out of 60,000?
A. That's right.
THE COURT: 60,000 or 6,000?
THE WITNESS: 60,000. The --

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THE COURT: Thank you. I just wanted to make sure I heard you.

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THE WITNESS: Okay. I was going to clarify how I got that number, but --

THE COURT: I'm not asking you that. I just wanted to know if I heard you.

THE WITNESS: Fine.

Q. BY MR. PIUZE: So anyway, 600 out of 60,000 is a statistic that can be figured out later on, but anyway, the Surgeon General of the United States in 1964 did acknowledge that there were 600 articles funded by CTR, the Committee For Tobacco Research, that was in the data base; right?

A. Not in 1964. The question was over the entire time of Surgeon Generals reports, up to the present time, and -- but, yes, in the '64 report they did acknowledge that they had cited, and I think we saw some examples yesterday of work that was cited in that report --

Q. Okay.

A. -- funded by CTR -- or by TIRC at the time.

Q. All right. So anyway, the Surgeon General's report of '64 says we acknowledge here are some scientists funded by TIRC that helped us come to our conclusions; right?

A. They cited their published papers. They didn't specifically say funded by TIRC. They didn't make that specific statement.

Q. Fine.

In another document you were shown yesterday, and the jury was shown yesterday, when the tobacco industry

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attacked the Surgeon General's report as some sort of hysterical document, that necessarily included these own scientists whose work was cited in there; right?

A. That would be correct.

Q. Do you know who Freddy Homburg is?

A. Homburger.

Q. Homburger?

A. Yes.

Q. Who?

A. He was a CTR grant recipient.

Q. You gave a deposition in this case up in Buffalo earlier this year?

A. Yes, I did.

Q. And a couple of times during your cross-examination here you wanted to mention other parts of the depo when you said something?

A. That's right.

Q. Was Freddy Homburger a person whose research was modified a little by the sponsoring tobacco agency?

A. Well, not his research, but how he wrote about the research was, yes.

Q. Explain.

A. He had drafted a paper that had shown that smoking or exposure to tobacco smoke had induced cancer in an animal model, and was going to publish this result, and he sent a draft of the paper in, as you typically do of work that you're doing to your funding agency, and he used the word inducing cancer, or carcinogenesis, and he received

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a visit from members of CTR, and I believe one of the SAB members perhaps, but it was a staff member certainly from

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CTR, who traveled to his vacation home while he was on vacation in Maine to persuade him to change the word from cancer to pre-malignant.

And he did that, and he published the results with the different words. Of course, it's your funding source so you're sort of dependent on those dollars, but I've never heard of a funding agency telling somebody to modify what they're going to say.

There's also an instance where he presented his results, and it was a big finding at the time that he had done his research about inducing cancer in this animal model, at a conference in Atlantic City, and because it was a big finding it actually had been scheduled for a press announcement, and normally what you do is you come in and you answer questions on your paper to members of the press.

He later learned --

MS. WILKINSON: Objection, your Honor. Now we're getting into total hearsay.

THE COURT: Sustained. Well, not only that, but it's not responsive anymore.

Q. BY MR. PIUZE: When he showed up for the press conference, was there no press?

A. There was no press.

Q. Have you reviewed industry documents that showed the reason that there was no press was because the --

MS. WILKINSON: Objection.

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THE COURT: We'll start first if he's reviewed any industry documents, and then what documents they are, and then we'll go from there. Okay?

Q. BY MR. PIUZE: On the issue of why there was no press?

A. Yes, I have.

Q. Which I guess you don't -- well, don't guess. Don't tell us why there was no press. Tell us which documents you reviewed about why no press showed up there.

A. It was a report written by a public relations person working for CTR. The individual's name was Leonard Zahn.

Q. And did Leonard Zahn explain whether or not he had a role in why the press wasn't there when this scientist, Homburger, was going to present this important finding on tobacco and lung cancer?

A. Yes.

Q. Did Mr. Zahn have a role in that?

A. Yes, he did.

Q. What was the role?

A. He switched the time, without Dr. Homburger knowing about it, for the press conference, so when he showed up there was no press there because the press was informed of a different time, and that was what was reported in his notes back on that event.

Q. As recently as yesterday did a CTR grantee complain --

MS. WILKINSON: Objection. Relevance, your Honor.

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THE COURT: Can I see you folks at side bar?

MR. PIUZE: Your Honor, can I start the question differently? Maybe I can save a trip, just see where it goes?

THE COURT: You can try. But the jury is going to -- is not going to assume that because he's asking a question that it's going to go anywhere.

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All right, folks? You all understand that?
JURY RESPONSE: Yes.
THE COURT: Go ahead, Mr. Piuze. We'll see where you're going.
MR. PIUZE: Lots of my questions don't go anywhere. They know that.
Q. Do you have another example of a scientist funded by CTR whose work or results or funding was affected by the CTR because they didn't like what he had to say?
THE COURT: That's a yes or no.
THE WITNESS: Yes.
Q. BY MR. PIUZE: What was the issue?
MS. WILKINSON: Objection, your Honor. Just end-running the earlier objection. It's the same topic that's beyond the scope, and irrelevant.
THE COURT: I'll see you folks over here.
MR. PIUZE: I tried.

(The proceedings continued at side bar, outside the presence of the jury, as follows:)

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THE COURT: The record should reflect that we're at side bar with all three counsel.
Mr. Piuze, help me out. What's going on? What do you want to show and what's the relevance? I'm not saying it is or isn't relevant.
MR. PIUZE: Sure. I'm ready to go.
First of all, it's not beyond the scope. I have an example of where the CTR cut some guy off forever in funding because he published something they didn't like. They went to him, they told him in advance don't do this, you can't do this, he did it anyway, and they cut him off forever because of that research. That's sure not beyond the question she was asking this morning.
THE COURT: All right. Now, just so I don't have foundation and hearsay objections to deal with, because I can feel those coming, help me out here. And I'm not making any comments to whether they are legitimate or not, I just -- you're all very good attorneys and you do what you're supposed to do, so while we're here, help me out.
MR. PIUZE: Sure.
Yesterday in my office on the Internet, as I was sitting there on a tobacco website, came out a story about this particular guy, his story, he put it on there, and it's this exact story I just told you.
It is hearsay, however it is the type of hearsay upon which an expert can rely. Our rules here, here, for expert witnesses, are that if he doesn't mention the specifics of it, which I won't ask him, he is able to

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rely upon reliable hearsay.
So, we have -- period.
THE COURT: Okay. Now, help me out a little bit more. What tobacco website? Who is the expert? I need to know this for me, not for the jury.
MR. PIUZE: I have the printout somewhere, but I screwed up my paperwork this morning and I'm scrambling and I don't know where it is. He might remember the name. I can't tell you that he would or wouldn't remember the name, but it was a CTR grantee who went out yesterday and publicly on AP or something like that, and told the story yesterday.

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He was from -- his research institute is in Falmouth, Massachusetts. That's what I remember.

(In the presence of the jury:)

THE COURT: Dr. Cummings, come on over here, would you, please?

THE WITNESS: Sure.

(The proceedings continued at side bar, with the addition of the witness, outside the presence of the jury, as follows:)

MS. WILKINSON: Your Honor, this goes to yesterday. I mean, we've had no notice of this, so I can't go check it out to see what's --

THE COURT: That's true. I know you're going to say

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that.

MS. WILKINSON: I mean, in addition to all the other things your Honor is raising.

THE COURT: Okay. But right now I need to find out more.

Hi, Dr. Cummings. I'm going to ask you, one, to keep your voice down, and number two, I'm going to ask you a series of questions. It's me you're answering because I need some information for me to make a ruling. Okay?

THE WITNESS: All right.

THE COURT: So I need straight answers. And don't volunteer anything. All right?

All right. Yesterday did you come across some information? That's yes or no?

THE WITNESS: Yes.

THE COURT: Thank you. A little closer here. Keep your voice down.

And where did you come across the information?

THE WITNESS: It was sent to my office.

THE COURT: To your office in New York?

THE WITNESS: It was on my e-mail, and when I was checking my e-mail, that's when I found the information.

THE COURT: Okay. And what exactly was sent to your office on the e-mail?

THE WITNESS: It was a news report that was sent on a CTR recipient, and that's what it was, I mean, it was basically talking about a gentleman who had received money, and he said that his research --

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THE COURT: Keep your voice down.

THE WITNESS: -- had been hushed up in the 1960s having to do with some work that he had done as a CTR recipient on filtered cigarettes, removing hydrogen cyanide and another chemical in cigarette smoke, acolein, and he said that it had been covered up because people from CTR had worried about the legal implications it would have for the cigarette industry at the time.

THE COURT: Spell acolein for the reporter.

THE WITNESS: A-c-o-l-e-i-n, I believe.

THE COURT: And the name of the researcher?

THE WITNESS: Eithl. E-i-t-h-l I believe is the correct spelling.

THE COURT: Not like the -- it sounded like the name of the Ford.

THE WITNESS: E-i-t-h-l I believe was the name of -- the spelling. I can't say that that's completely accurate.

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MR. PIUZE: What was the source of the news story?
THE COURT: I was going to get there.
THE WITNESS: Well, it was a wire service news story that, you know, I get these all the time, they get sent to me on issues related to tobacco, and it was over the wire.
THE COURT: Which wire?
THE WITNESS: I believe it begins with an A. A --
THE COURT: AP?
THE WITNESS: No, it was not AP. A-n-n-o-v-a, I believe was the name of the source. It was sent to me by

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somebody in my office.
THE COURT: Okay. Have you checked on this further?
THE WITNESS: I have not.
THE COURT: Have you ever heard of this researcher or research project?
THE WITNESS: I have not heard of the specific research project. I do know that this is an investigator who had CTR funding.
THE COURT: All right. Do you have any further questions of him, Mr. Piuze?
MR. PIUZE: No. But if my use of the term "web" is too broad, it's only because I'm relatively computer illiterate. So don't take any kind of hidden agenda there, just dumbness.
THE COURT: Oh, I'm a computer dinosaur. I can relate to that.
Any questions from you?
MS. WILKINSON: Yes, your Honor.
Dr. Cummings, did you send an e-mail to your office yesterday requesting information?
THE WITNESS: No, I did not.
MS. WILKINSON: Okay. Did this come from a website associated with your -- with any anti-tobacco activities? You know there are some available.
THE WITNESS: No.
MS. WILKINSON: Okay. You had never heard of this gentleman before you received the wire service notice; correct?

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THE WITNESS: I knew he was a recipient. I didn't know the nature of his research until I read the article.
MS. WILKINSON: And you've never read any documents about him in your research on CTR, TIRC?
THE WITNESS: Just the annual reports that indicate that he was a CTR recipient.
MS. WILKINSON: You never read any of his research?
THE WITNESS: No, I have not.
MS. WILKINSON: Have you seen any other documents related to him, his funding source or anything other than the annual report?
THE WITNESS: No, I haven't.
MS. WILKINSON: And because you just got this yesterday, you never provided it to us beforehand; right?
THE WITNESS: Correct.
THE COURT: All right. Thank you very much. You can go back to the witness stand, Doctor.
Mr. Piuze, I agree it's relevant, but right now, for me, it's too tenuous. I don't know anything about the news service, other than the fact that I understand that the man worked or did work for CTR. I'm not comfortable with the foundation as it currently stands.

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So I'm going to say no. I agree with you it's relevant, I agree with you it's on point, I agree with you it's within the scope of redirect, but I'm just uncomfortable with the source. It's too much out in the air. I don't really care that defendants haven't had a chance to investigate it, but the fact he hasn't had a

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chance to do very much investigation makes me uncomfortable. Therefore it's not coming in.

MR. PIUZE: May I go back to my seat and ask a different series of questions?

THE COURT: Of course. You can ask anything you want.

MR. PIUZE: Thank you

(The proceedings resumed in open court, in the presence of the jury, as follows:)

Q. BY MR. PIUZE: Doctor, yesterday on cross-examination you were asked a question whether the 1964 Surgeon General report, I think this is a quote, was a seminal report in the United States.

Do you remember that?

A. Yes.

Q. Okay. And I believe you answered that question "Yes"?

A. Yes, I did.

Q. Was it the seminal, original, of the official Surgeon General's reports?

A. It was the first of the official reports, although there were two earlier statements that Surgeon Generals made that were probably -- were, in fact, earlier inconsistent with the '64 report.

Q. So, that's where I was going.

In 1957, and again in 1957, first one in '57

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a joint report by three major U.S. health organizations, like the Cancer Society and the Heart Society, Lung Society, and the second time in '57 by the Surgeon General himself, Burney?

A. Yes.

Q. And again in '59 by the U.S. Public Health Service, had this ground already been covered in the United States, that -- by committees, I mean by big-time, high-ranking committees, that smoking caused lung cancer?

A. Yes, it had.

Q. Okay. There was some questioning at the opening your cross-examination about you being a plagiarer or something like that.

Do you remember that?

A. Yes.

Q. Do you want to explain that, please?

A. Sure. I had written an expert report for a case and had utilized a review article that had just come out by a Steven Hecht, Dr. Hecht I know well, he published it in the Journal of the National Cancer Institute. I thought it was an authoritative source updating the latest information on smoking as a cause of lung cancer, so it was under that opinion, and I took several sentences that were summary statements, it was a review article, I footnoted the reference but I did not put quotes around the text that I had taken from that report.

Generally when you write an expert report

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you indicate your overall opinions and then you provide
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supporting documentation.
It was sloppy quotation marks on my part, and that's what I explained. And when I was asked about it at deposition, I basically explained that it was Dr. Hecht's work, I didn't attribute it to myself.
Plagiarism is when you take somebody else's ideas and you count them as your own. So I'm guilty of sloppy quotations, but I'm not a plagiarist. And that's what I was trying to answer yesterday.
Q. Thank you. Just two more areas.
Gallup polls. Was the tobacco industry's use of these polls in cases just like this criticized by one of the high-ranking people in the Gallup organization?
MS. WILKINSON: Objection. Hearsay and beyond the scope of his expertise, your Honor.
THE COURT: I have a problem with the way the question is asked, so. . .
Q. BY MR. PIUZE: Do you know who Lydia Saad, S-a-a-d, is?
A. Yes.
Q. Who?
A. She's a person who works for Gallup who has written on the Gallup Polls, presented a paper, actually, at a conference summarizing some of the very polls we talked about here today.
Q. As part of the work you've done on tobacco control up in Buffalo, I think I heard you say you conducted various polls yourself?
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A. Yes, I have.
Q. My eye is still on that clock, so not in a lot of detail, but just give us a little background so the judge will know you know what you're talking about, please?
A. Sure. I've done national surveys, asked smokers their opinions and beliefs about cigarette smoking as a cause of disease. I did a survey most recently in the year 2001, a thousand smokers, the Commit Study; that survey of 2,000 smokers -- or 20,000 smokers, excuse me, that we did in 20 U.S. communities also included a variety of questions asking smokers about their beliefs about smoking and disease, the benefits of quitting; and I actually have a very large survey in place right now involving 8,000 smokers that we're tracking specifically on this issue of what smokers know and believe about smoking. So I'm very familiar with the topic and research in this area.
Q. As part of your background, store of knowledge, are you familiar with Ms. Saad's paper, "The Tobacco Industry Summons Polls to the Witness Stand"?
A. Yes, I am.
Q. I'm going to ask you specifically not to quote from it. Okay?
A. Sure.
Q. Okay. What I'd like to know, based at least in part upon your reading of Ms. Saad's article, paper, "The Tobacco Industry Summons Polls to the Witness Stand," do you have some opinion about whether these issues are being
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presented in a misleading way here?
A. Yes, I do.
MS. WILKINSON: Objection, your Honor. Again --

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THE COURT: Foundation? There has been a foundation laid. Is it 352 or something else?
MS. WILKINSON: Yes, because of the way the foundation was laid with someone else's article, your Honor, which I'm objecting is improper in this case.
THE COURT: Overruled.
MR. PIUZE: Okay?
THE COURT: Is this a new chart here?
MR. PIUZE: Yes. Well, no. It's 242.
THE COURT: Thank you.
MR. PIUZE: Not new.
Q. In the year that the Frank Statement came out and the year when there was a lot of beginning controversy about the health scare, in June of 1954, just read the question, please.
A. "Have you heard or read anything recently to the effect that cigarette smoking may be a cause of cancer of the lung?"
Q. Okay. That same year, was the American population asked whether or not they had heard anything about flying saucers?
A. Not that same year, actually.
Q. What year?
A. 1987.
Q. In 1987 when the American population was

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asked have they heard anything about flying saucers, what was the answer?
A. It's actually UFOs, and it was 88 percent said yes, they had heard or read about the fact that there were UFOs.
Q. This kind of a question, what's that question called?
A. It's awareness, general awareness of the topic. That doesn't mean belief or knowledge.
Q. This particular question that's up there, an awareness question, does that have anything to do with who believed smoking was the cause of lung cancer?
A. No.
Q. Does that have to do with the fact that it was being discussed a lot at that time?
A. It has to do with it being discussed a lot at that time.
Q. Have there been let's say negative discussions about the use of this, because the question was worded as a cause of, a cause of cancer?
A. Yes, there has been some discussion of that.
Q. Why?
A. Because it's just -- well, the reason there's been discussion, cigarette smoking is the major cause, and simply a cause could mean that it could be one of many things, like air pollution, genetics, asbestos, you can go on and on with the list. But that's -- it's not really getting at that it's the most important or a major cause

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or increases your risk by X-amount.
Q. In 1954 and going on, right up until today, have more and more and more people been aware that smoking is a cause of lung cancer?
A. Yes.
Q. Do smokers, real smokers, heavy smokers, lag behind the rest of the population in that awareness?
A. Yes. Consistently they've lagged behind in

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that awareness, sometimes by as much as 10 to 20 percent, but significantly different; in other words, non-smokers tend to nominate cigarette smoking as one of the causes of lung cancer much more than smokers do, and there's -- heavy smokers tend to be even less likely to nominate that. That's what I've found in my own research.

Q. And what are the stated reasons, pollster reasons, scientific reasons for that, please?

A. Well, in my view, it's denial. Rationalization. People are looking for other causes in hopes that they are not personally at risk, and of course, those who are most at threat, those who are smoking, and particularly those who smoke heavily, have the biggest threat and the need for rationalizing, and many smokers that I see say I don't think -- you know, actually people who have cancer, the most common thing they tell me is: I never thought this would happen to me. That's what they tell me.

Q. Here's No. 240 from yesterday and this morning. Where is the question up there about is smoking the most

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important or the major or the overwhelming or something like that cause of lung cancer?

A. It's not on there.

Q. Were you shown on cross-examination any of the polls that Philip Morris personally -- not Gallup now, but polls Philip Morris paid for, that Philip Morris has personally conducted on these issues?

A. No. But I'm aware of such polls.

MS. WILKINSON: Objection, your Honor. This is the document that was withdrawn by Mr. Piuze.

MR. PIUZE: Excuse me?

THE COURT: Do you want to -- you look a little confused, Mr. Piuze. Why don't you two talk.

And folks, I'm going to read you yet another little thing here.

(Sotto voce discussion held between counsel)

MS. WILKINSON: Your Honor?

THE COURT: Yes.

MS. WILKINSON: We need a side bar. Sorry about that.

THE COURT: Okay. Talk, folks.

(The proceedings continued at side bar, outside the presence of the jury, as follows:)

THE COURT: The record should reflect that we are

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at side bar with all the attorneys.

Ms. Wilkinson, help me out here, what's going on?

MS. WILKINSON: Your Honor, yesterday morning Mr. Piuze had this partial survey that he said Philip Morris had done. He withdrew that when I was going to raise objections. He's now going to ask this man to talk about it. I assume because he withdraw the document he's not going to be allowed to have him talk about it without the document. That's not fair. We were relying yesterday on what he told us, that he was going to withdraw that and that that wasn't going to be a topic of discussion.

So I think it's unfair now at this point that

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he's going to try to get it in by having this man talk about it but not through the document.

THE COURT: What was wrong with the document yesterday, just so I know where we're going here?

MS. WILKINSON: It's a totally incomplete document. It's a 1972 document that says that Philip Morris did a survey. It doesn't show the entire survey results.

My information is, and it's limited a little, is that they went out and did a survey of people who bought magazines, and in the magazines somewhere it would say smoking is dangerous, and they would ask you what do you remember, and they had all different things that they checked off, and very few people said they remembered from the magazine that smoking was dangerous.

Is that right, Mr. Gardner?

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THE COURT: Do you know what the survey said, Mr. Gardner? Help me.

MR. GARDNER: I do, your Honor.

What it was was there were advertisements in the magazines for the different -- a bunch of different brands of cigarettes, some Philip Morris, some not, and at the end of reviewing, you know, thumbing through the magazine, they asked the magazine viewers do you remember seeing, you know, X brand of cigarette and anything about the health warning, you know, that was part of the magazine ad, and then the percentages were based on whether they remembered seeing it or not seeing it.

But the thing that Mr. Piuze offered yesterday is wholly incomplete. It's a few pages. It's not the total document, it's completely misleading because it is only a few pages out of a poll; you can't tell by looking at the face of it, anything that the poll really said or what it really was and it was never disclosed to the public.

THE COURT: All right. Thank you.

Now, Mr. Piuze, now that I understand what their concerns are, tell me about things from your side.

MR. PIUZE: Yeah. I'm not offering any documents, and because I'm not offering any documents that was an interesting but irrelevant discussion.

There is no rule in this state that says when a witness testifies that he is to have documents there with him. He has knowledge of these things, and if you want more foundation about his knowledge I'll give it.

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I did withdraw the document at your request, I'm not going to use the document, and if they want to use the document -- if the defense wants to use the document to impeach him or do something with him, that's their right. They can cross-examine him on the weight of the evidence, that's their right.

But what I'm going to use it for is, Philip Morris conducted it is own polls, Philip Morris conducted its own similar polls to this on awareness and beliefs, and their results were way different, and going back to 1953 as an example, 1 percent or less of the people thought smoking caused lung cancer.

Now, after putting this Gallup poll up there, and Philip Morris having conducted its own poll through an opposing polling organization and getting exact opposite results, that's absolutely fair game.

THE COURT: Was the poll done by Philip Morris or an independent pollster?

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MR. PIUZE: Philip Morris hired Roper. Philip Morris, your Honor, has hired Roper over the years, up until, who knows how recently, but as recently as this year. Previously secret documents that were never put up on the website have come out showing that Philip Morris was doing Roper polls at least into the late eighties, if I'm not mistaken, and they've never been disclosed before, they are under seal in Miami, Florida right now.

THE COURT: All right. I'm going to allow -- I'm going to overrule the objections. Don't you dare use the

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documents because they were withdrawn, and if they're not -- I just want to make the record clear, because right now I have some concerns as to whether they're complete. But the questioning is fair game, and I'm overruling the objections of the defendants.

(The proceedings continued in open court, in the presence of the jury, as follows:)

THE COURT: You have one minute and then we're going to take a break, Mr. Piuze. Not one minute for the line of questioning, just one minute right now.

Q. BY MR. PIUZE: Did Philip Morris conduct its own similar polls to these two exhibits that are up there in front of the jury?

A. Yes, they have.

Q. Did they use the Roper polling organization?

A. Yes, they did.

Q. Going back at least to around '53 or so?

A. There is a '53 poll that I've seen, yes.

Q. Did Philip Morris ask Roper to find out what percentage of the American people thought smoking caused lung cancer in '53?

A. Yes, they did. Actually, cancer. They did report that in their findings.

Q. Cancer.

A. Cancer.

THE COURT: And we're going to hold that thought for

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a second. Well, for 15 minutes.

You are admonished that it is your duty not to converse among yourselves or with anyone else on any subject connected with this trial or to form or express any opinion thereon until the cause is finally submitted to you.

I'll see you back at 10:15.

(Recess taken)

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CASE NUMBER: BC261796
CASE NAME: RELLER vs. PHILIP MORRIS
LOS ANGELES, CA FRIDAY, JUNE 27, 2003
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
TIME: 10:17 A.M.
REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
APPEARANCES: (AS HERETOFORE NOTED)

* * *

(The proceedings continued in open court, in the presence of the jury, as follows:)

THE COURTROOM ASSISTANT: Remain seated and come to order. Court is again in session.

THE COURT: All right. Reller versus Philip Morris, BC261796. The record should reflect that all 12 jurors and four alternates are present. All counsel previously stated are present. Dr. Lewis is here.

Dr. Cummings is in the witness stand. Sir, you're still under oath.

Mr. Piuze, the clock is ticking.

Q. BY MR. PIUZE: Well, the clock is ticking down at LAX too, isn't it?

A. Yes, it is.

Q. Your son's graduating from high school tomorrow?

A. Yes, he is.

Q. Are you going to kill me if I don't get you out

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of here?

A. Yes, I will.

Q. See this question here about whether or not smoking is harmful to your health?

A. Yes.

Q. Do you see that question?

When that question was asked back in 1954, was it followed up with a yes, so what's harmful about it?

A. Yes, it was.

Q. What was harmful about it?

A. Well, the people, when they were asked that question in 1954 -- that result is 1990 -- 70 percent said it was harmful to health. But when they said what's so harmful about it?, the major thing that was mentioned was coughing, things like irritation. A very small percentage, less than four percent, mentioned cancer.

Q. Okay. Thanks.

The Roper poll now, the Roper poll that was sponsored by Philip Morris itself in '53, did it go through the same drill, basically?

A. Pretty much, yes.

Q. What percentage of people back there thought smoking caused cancer?

A. In '53, less than 1 percent actually was the statement that I saw in a summary of the findings from that poll.

Q. So in '53, in Philip Morris's own poll, less than 1 percent, and '54 when you get away from the harmful

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effects generally, like throat irritation, et cetera, it's down to four percent or so for cancer.
A. That's right.
Q. Okay. Last. When you fully inform the people that come through your smoking cessation clinic, as you are fully informing them do you get information from them about how the tobacco industry's stance shapes their beliefs about whether smoking is going to be bad for them?
A. Yes. What they believe?
Q. Yes.
A. Yes, I do.
Q. What?
A. Well, I ask them whether they believe that the cigarette companies still say that smoking doesn't cause lung cancer, what I find is 60 percent of smokers, this was from a poll that I did in the year 2001, 60 percent --
MS. WILKINSON: Objection, your Honor, then, on relevance, it's 2001, based on your earlier ruling.
THE COURT: Sustained. We're interested in up to 2000 at the time of his diagnosis, Mr. Piuze.
Q. BY MR. PIUZE: Okay. What about before 2001? What about as of November 14, 2000?
A. Yes. My -- the majority of smokers --
MS. WILKINSON: I'm going to object to the foundation, because I haven't heard what his foundation is.
THE COURT: Do you want to lay a foundation, Mr. Piuze?
Q. BY MR. PIUZE: Before you tell us what you
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know, tell us how you know it.
A. I know from questioning smokers in my clinic that I see, I've asked them that question, and --
Q. Excuse me. Wait one second.
What do you know?
A. What do I know?
Q. Yeah.
A. I know that the majority of smokers to this day, or back prior --
THE COURT: We're interested November 2000.
THE WITNESS: Okay. November 2000, believed that the cigarette companies still denied that cigarette smoking caused lung cancer. That was their belief, the majority, actually, of smokers believed that, when asked what is the cigarette company's position? Doesn't cause lung cancer. That's what they say.
Q. BY MR. PIUZE: And do they tell you that played a role in their decision to smoke?
MS. WILKINSON: Objection, your Honor.
THE WITNESS: I didn't ask --
THE COURT: Well, excuse me. Wait a second here.
I lost that.
MR. PIUZE: Based on the answer, I'll withdraw the question.
THE COURT: Wait, wait, wait. It's all right. Wait a second.
Overruled. That's yes or no.
Actually it's hearsay. Overruled. Sorry.
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Sustained.
MR. PIUZE: Withdrawn.
THE COURT: Thank you.
MR. PIUZE: No further questions. Thank you very

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much.
THE COURT: The clock's ticking for you.
MS. WILKINSON: Thank you, your Honor.

RECROSS-EXAMINATION

BY MS. WILKINSON:
Q. Dr. Cummings, when you were talking with Mr. Piuze this morning on redirect, you said that people who come in and see you at the clinic tell you that they never thought they would get lung cancer; right?
A. People with lung cancer or emphysema or heart disease, when I ask them, you know, did you ever think this would happen to you, the vast majority of people say I never thought this would happen to me. In fact, it's a very common response, so common we actually created an ad with interviews of --
Q. Dr. Cummings, if you answer my question, you'll get to catch your flight. If you give long-winded narrations, we're not going to get you out of here. Okay?
A. Whatever you say.
Q. I asked you a question about when people come in and see you and they have cancer, as you told me, and I understand that, they don't think that it would happen to

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them; right? They don't think they're going to be the one in ten heavy smokers or one out of nine heavy smokers that get lung cancer; right?
A. That's right. It would be higher for a heavy smoker.
Q. And that's been true in the 1990s as you did your work; right?
A. That's right.
Q. And even as we saw with the Gallup poll, when in 1990 96 percent of the people thought that smoking was harmful, they still didn't think they would be one to get cancer; right?
A. Well, that's not talking about cancer. It just says harmful.
Q. Right. But they said they knew it was harmful; right? In the 1990s?
A. They did.
Q. And you told us that by the 1990s, awareness had gone up about the dangers of smoking and the associated dangers of lung cancer; right?
A. Yes.
Q. And even then people thought it wasn't going to happen to them.
A. That's right.
Q. You were discussing the polls and you mentioned an article by Lydia Saad; right?
A. Correct.
Q. And you've told us I think several times during

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your examination that publishing in a peer-reviewed journal is a good thing to do; right?
A. That's right.
Q. Because people test your propositions that you're going to try to publish and see if there's enough foundation to support them; right?
A. Yes.
Q. And you know that Ms. Saad never got her article published in a peer-reviewed journal, despite

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trying to get it published; isn't that right?
A. No. I don't know that she tried to get it published. All I have a copy of is the paper she presented at a meeting.
Q. So you've never -- you never talked to her about the article, then; right?
A. No.
Q. And you wouldn't be able to tell this jury that it's not true that she submitted and was rejected because it was reviewed by independent reviewers and read like a brief for the plaintiff.
A. I'm not familiar with that, no.
Q. So you're willing to come in and talk to the jury about an article that you know wasn't published; you've never seen it published in a peer-reviewed journal, have you?
A. No, I haven't.
Q. Now, you responded to Mr. Piuze about some questions about lawyers working on some special projects;

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right?
A. Selecting them, yes.
Q. And some of the things they did you said was actually pick witnesses, expert witnesses to testify at trials; right?
A. That was one of the stated goals.
Q. You're not suggesting there was anything improper about that, are you?
A. No. I'm just --
Q. I mean, you were picked by a lawyer to testify in this case; right?
A. That's right.
Q. And you've been picked by lawyers lots of times to testify against tobacco companies.
A. That's right.
Q. In fact, you've been doing it for so long that way back in 1994, you attended a conference with a bunch of plaintiffs lawyers and talked about how to sue tobacco companies; right?
A. I attended a conference because a colleague of mine was presenting some of their findings at that conference and had been invited to do so.
Q. Well, at the conference were plaintiffs lawyers talking about how to sue tobacco companies, weren't they?
A. It was a conference, yes, of -- I wouldn't say plaintiffs lawyers; it was a conference of lawyers held at Northeastern University.
Q. Well, at Northeastern University is a man named

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Professor Daynard; right? D-a-y-n-a-r-d?
A. That's right.
Q. He's very well known for encouraging, training plaintiffs lawyers to sue tobacco companies, isn't he?
A. He's very well known for, you know, running a project that's on the issue of tobacco litigation, yes.
Q. And that includes working with plaintiffs lawyers -- not defense lawyers -- and helping them sue tobacco companies, isn't it?
A. I'm not exactly sure what Professor Daynard does. I know he's had some conferences, and I've been invited to speak at some of his conferences on some of my research.
Q. And you attended a litigation strategy

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conference in 1994 organized by him, where you met with lawyers suing tobacco companies, didn't you?
A. Yes.
Q. So you've been doing that, going to conferences like that, since 1994; right? Making presentations to those lawyers?
A. I went to one other conference and was invited to give a presentation on some of my document work at a conference. That's the only other time I've attended his conferences.
Q. And those are conferences where only plaintiffs lawyers are allowed. Defense attorneys aren't allowed to attend those, are they?
A. That's right.

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Q. Now, you told Mr. Piuze that you really didn't plagiarize in that report because you put footnotes in the report; right?
A. That's right. I said it was sloppy -- actually, what I specifically said is plagiarism is when you steal somebody else's idea and represent it as your own, and that's not what I did.
Q. All you did, supposedly, was just forget a few quotation marks; right?
A. That's correct.
Q. Well, let's take a look at what you did and where you got it. All right?
First of all, so we can lay the foundation for the jury, you wrote an expert report in a case that we're going to refer to as Felice on August 6th, 1999; right?
A. That's right.
Q. And in that, one of the things you were writing this expert report about was that cigarette smoking is the cause of lung cancer.
A. That's right.
Q. And in that, you footnote different portions to show anyone who's reading your report where you got your information.
A. That's right.
Q. And when you do that, if it is a direct quote from that article, you should have put quotation marks around it.
A. That's right.

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Q. If it is a direct quote, that sentence or that paragraph, you also should have footnoted it to that source; right?
A. Technically you should. I was just trying to list the citations for the evidence that I was using to support my opinion that cigarette smoking causes lung cancer.
Q. Well, you did footnote other sources for other sentences, didn't you?
A. Yes, I did. But they were not quotation marks, they were just opinions, and I was paraphrasing the opinions.
Q. Well, let's look at what you paraphrased and what you copied verbatim, Dr. Cummings.
This is your report, isn't it?
A. Yes, it is.
Q. Let's start right here. Read that first -- do you see that first -- actually that whole paragraph, 2.1?
A. Sure. I'd be happy to.

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Q. Now, you don't have to read it out loud, to save time here. You have a Footnote 1 there; right?
A. That's right.
Q. And a Footnote 2?
A. That's right.
Q. And even a Footnote 3; right?
A. Right.
Q. And is that Footnote 4 there?
A. I don't know. I can't read it.

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Q. It's hard to see, isn't it. Sorry.
That looks like a 4 doesn't it?
A. It's hard to tell.
Q. Okay. Well, let's go back up to the first part, and down at the bottom of the page you have those footnotes listed; right?
A. That's right.
Q. And, in fact, you have Dr. Hecht's article as Footnote 6; right?
A. That's right.
Q. And when we look back up, that's the document you copied from; right?
A. That's right.
Q. And when you look at this, you gave Dr. Hecht credit only for that sentence there as you see it that's not highlighted in yellow?
A. That's right.
Q. All right. So if I'm reading this as an independent reviewer, I believe that the only information you got from Dr. Hecht on this page is that sentence that starts with "according" and ends with Footnote 6; right?
A. Well, if you're only reading it. But if you actually read the transcript where I attributed the other sentences to Dr. Hecht, you would know.
Q. Well, the transcript. But this report gets sent to lawyers like me, defense lawyers, so that I know what you're going to say, with a report, so I can read it and I can test where you got your information; right?

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A. That's correct.
Q. And before we have any discussions about the report, the idea is the report is supposed to give all of the accurate sources for your information, isn't it?
A. Well, it's supposed to give a representative. It would be hard to give all of the sources on the evidence on smoking and lung cancer since there's just overwhelming evidence. That's why I cited review articles.
Q. But you were careful --
THE COURT: Ms. Wilkinson, real quickly I'm just going to mark that as 244. Not that it's coming in, but I need to keep track of it.
So report by Dr. Cummings?
MS. WILKINSON: Cummings, for the Felice case.
THE COURT: Okay. Thank you. 244.

(Exhibit No. 244 was marked for identification)

Q. BY MS. WILKINSON: But Dr. Cummings, here -- and you know where I'm going, don't you? This highlighted portion is lifted directly from this article by Dr. Hecht, isn't it?
A. It may be. I don't know. I don't think it was, but. . .

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Q. Would you like me to show it and compare it to you?
A. Sure.
Q. Okay. Let's take a look.

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See what we've done here? See No. 1? That paragraph, we've numbered it No. 1. Do you see that?
A. Yes.
Q. And then we've numbered the next portion of the paragraph that's highlighted as No. 2.
A. Correct.
Q. Do you know why we did that? So we could go back and see if you copied exactly from Dr. Hecht's article and whether you gave him any credit. All Right?
A. Sure.
Q. And you see that the only place -- you gave other people credit for the information up here, but you never credited Dr. Hecht except for this sentence that isn't copied verbatim.
Do you see that?
A. Well, actually that's not entirely correct. The other sentences -- I think Dr. Hecht, since it was a review article, was citing these other sources.
Q. Right. But the difference is, you copied what he wrote verbatim.
A. I did.
Q. Without putting quotes; right?
A. That's what I said.
Q. And without putting a footnote for those sentences like you did in other sentences to his work.
A. Well, there is a footnote to the work.
Q. Not for those sentences up in 2.1, is there?
A. No. Those are the sentences -- those are the

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footnotes that Dr. Hecht used in his article. So I was giving the primary reference, not a secondary reference.
Q. Well, let's look right here. There's No. 1.
A. Right.
Q. And why don't you read -- you didn't include the worldwide because the report was only about the United States. Read what Dr. Hecht wrote.
A. Well, actually --
Q. These are his words.
A. Right. This is Dr. Hecht citing --
Q. Just read what he wrote, please.
A. Sure. Okay.
"Lung cancer continues to be the leading cause of cancer death in both men and women in the United States, with more than 158,900 deaths -- 158,900 deaths expected in 1999."
Do you want me to --
Q. The next highlighted portion, please.
A. Sure.
"Extensive prospective epidemiologic data clearly establish cigarette smoke as a major cause of lung cancer.
"It is estimated that about 90 percent of male lung cancer deaths and 75 percent to 80 percent of female lung cancer deaths in the United States each year are caused by smoking. The risk of lung cancer diminishes after smoking cessation, but not during the first five years and the relative risk

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never returns to that of a non-smoker."
Q. Now, when Dr. Hecht wrote this and he's quoting these original sources, he's not talking verbatim from them, he's just saying this sentence he wrote is based on information he got from those footnotes; right?
A. That's right.
Q. Because if he did, he would have put quotation marks if he were copying from those original sources; right?
A. That's right.
Q. But what you did was take his exact language and instead of citing him, you cited the original source information and made it look like you had put these sentences together yourself; right?
A. That's right.
Q. Read that for the jury, please, Paragraph No. 2.1?
A. Sure. I'd be happy to.
"Lung cancer is the leading cause of cancer death in both men and women in the United States with more than 158,900 deaths expected in 1999. Extensive prospective epidemiologic data clearly establish cigarette smoking as the major cause of lung cancer. It is estimated that about 90 percent of male lung cancer deaths and 75 to 80 percent of female lung cancer deaths in the United States each year are caused by cigarette smoking. The risk of lung cancer diminishes after smoking cessation but not during the first five years,

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and the relative risk never returns to that of a non-smoker."
Q. That is exactly the language that was in Dr. Hecht's article, isn't it?
A. That's right. Citing the sources --
Q. We could go on with other paragraphs, couldn't we?
A. Sure. But citing the sources that he had cited, which are reliable sources that I'm very familiar with, and --
Q. But you didn't rewrite that into your own language, did you?
A. No. I was being rushed to get a report in.
Q. Now, you were talking about people who wouldn't take money from tobacco companies. Do you remember that?
A. Yes.
Q. And you named all kinds of institutions, including an institution that's very well known, we've talked about it here in this trial, Harvard University; is that right?
A. That's right.
Q. And you meant to suggest that Harvard had made a decision they weren't going to associate or take money from the tobacco companies; right?
A. That's right.
Q. And do you know also that Harvard University refuses take money from Army ROTC and allow an Army ROTC scholarship program on its university?

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A. No, I don't.
Q. Do you know that some universities have political or policy interests that they decide as a group that they're not going to take money from certain sources; right?

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A. I'm not familiar with that. I have looked at the issue of taking money from tobacco companies.
Q. But you haven't looked at any other issue about taking money from certain sources; right?
A. No. I haven't, personally.
Q. Because you've been focusing on the tobacco companies since you started working on your projects back in the late '80s/early '90s; is that right?
A. That's right.
Q. And you've always done those projects on behalf of plaintiffs lawyers, right, for trials?
A. No, I've done the work on behalf of my job at Roswell Park. That's what I'm expected to do as a Senior Research Scientist: get grants, publish those findings in peer-reviewed publications, and I've done that I think over 170 times.
Q. And you don't have to, as a member of Roswell, testify on behalf of a plaintiff against a tobacco company; right? There's no job requirement to do that.
A. No, there isn't.
MS. WILKINSON: All right.
No further questions, your Honor.
THE COURT: Mr. Piuze?

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FURTHER REDIRECT EXAMINATION

BY MR. PIUZE:
Q. Professor Richard Daynard, law professor at Northeastern University Law School in Boston, Massachusetts, does he run something called the Tobacco Litigation Project?
A. Yes, he does.
Q. Is the goal of the Tobacco Litigation Project to help decrease and diminish cigarette smoking in the United States as a result of lawsuits exactly like this one?
A. Yes, it is. That's one of their stated goals.
Q. For 20 years has Professor Daynard been involved in tobacco control through this means: litigation?
A. Yes.
Q. When you attended his conference the last time, was there someone there named Julius Richmond, former Surgeon General of the United States?
A. Not at his last conference. I know Dr. Richmond quite well, however.
Q. Okay. Are there public health officials invited to Dr. Daynard's conferences?
A. Yes.
Q. Not just lawyers, but high-ranking public health officials from around the country.
A. That's correct.
Q. Including you?
A. Including myself.
Q. Does it offend you that when you go to a

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meeting of Professor Daynard's Tobacco Litigation Control Project with other government officials, health officials, and lawyers to control tobacco, that the tobacco industry lawyers aren't invited? Does that bother you?
A. No, it doesn't bother me.
MR. PIUZE: No further questions.
MS. WILKINSON: Your Honor, I just have --
THE COURT: Go ahead.

FURTHER RECROSS-EXAMINATION

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BY MS. WILKINSON:
Q. You know that Dr. Daynard has now been organizing lawsuits against McDonald's; right?
A. No.
Q. You're not aware of that.
A. I'm not aware of that.
MS. WILKINSON: No further questions, your Honor.
THE COURT: Anything else?
MR. PIUZE: No.
THE COURT: Thank you very much.
May this witness be excused, Mr. Piuze?
MR. PIUZE: Please.
THE COURT: Ms. Wilkinson?
MS. WILKINSON: Yes. Of course.
THE COURT: Thank you very much for coming. Have a safe flight home.
THE WITNESS: Thank you.

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(Witness excused)

THE COURT: Next witness.
Which one of you two is going to handle the next witness?
MS. WILKINSON: I think it's Dr. Qasabian. If it is, it's me. It's my witness.
THE COURT: It is.
MR. PIUZE: Dr. Levon Qasabian, please.
THE COURT: Dr. Qasabian, if you'd come over here, stand behind the reporter, face the clerk to be sworn. Thank you.

LEVON QASABIAN, M.D.,
called as a witness by the Plaintiff, having been first duly sworn, was examined and testified as follows:

THE CLERK: Thank you. Please be seated at the witness stand.
Sir, please state and spell your name for the record.
THE WITNESS: Levon Qasabian. First name L-e-v-o-n, last name Q-a-s-a-b-i-a-n.
THE CLERK: Thank you.
THE COURT: Thank you.
Mr. Piuze?
MR. PIUZE: Thank you.
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DIRECT EXAMINATION

BY MR. PIUZE:
Q. Good morning.
A. Good morning.
Q. What's your occupation, please?
A. I'm a physician. A medical oncologist.
Q. What's a medical oncologist, please?
A. A doctor that deals with cancer patients.
Q. Tell the jury your educational background that allows you to be a doctor that deals with cancer patients.
A. Well, first you have to complete medical school for about four years; after graduating from medical school you must do a internal medicine residency for three years; after completing internal medicine residency for three

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years you do an oncology fellowship, and I combined it with hematology for another three years. So six years post-graduate to become an oncologist.

THE COURT: Doctor, I need a favor. I need you to keep your voice up a bit more. I don't know if anybody else is having some difficulty hearing you, but I am. Okay?

THE WITNESS: Okay.

THE COURT: Thank you.

Q. BY MR. PIUZE: So you went to school for a long time.

A. That's right.

Q. Where and when?

A. Medical school was in the University of

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Missouri in Columbia from 1984 to 1988; I did a transitional residency in -- at San Bernardino County for a year; and then I was practicing as a general medicine doctor for two years before doing medicine residency at the UCLA San Fernando Valley program in Sylmar, California, for three years, from '91 to '94, and I stayed at that same program from '94 to '97 for oncology.

Q. Are you board certified?

A. Yes. I am board certified in internal medicine and medical oncology.

Q. What does board certification mean, please?

A. Board certification means that after completing the required training, you take an exam.

Q. And if you get to pass the exam, you get to say you're board certified.

A. That's right. Well, after doing all the training.

Q. Right. What percentage of your practice is oncology versus hematology, please?

A. Talking about 80 percent of the practice is oncology and about 20 percent is hematology.

Q. Why don't you give us just a very brief description of hematology.

A. Hematology deals with disorders of the blood, clotting and different diseases common to different people, like sickle cell anemia in African-Americans, thalassemia in people of Mediterranean background, clotting disorders, various different type of clotting disorders; we do a lot of

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bloodless medicine with Jehovah's Witnesses, we try to get them through surgery and hospitalization without giving any blood transfusions.

Q. Thank you. As a medical oncologist, how do you treat cancer patients, please?

A. For the most part, I deal with chemotherapy where we instill chemicals by vein into the patient's blood or by pills. We do use radiation therapy, but I do not do the radiation therapy, I consult with a radiation oncologist for that part.

Q. Okay. If I were to suggest there are basically three ways to treat cancer: with chemicals, with radiation and with a knife, would that sound about right?

A. That's right.

Q. And the knife person would be the surgical oncologist?

A. That's right.

Q. And the radiation person would be the radiation oncologist.

A. That's correct.

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Q. And you are the medical oncologist.
A. That's right.
Q. Where do you practice, please?
A. We have a number of offices. I mainly practice out of the office on Olympic and San Vincente in Los Angeles. And I also have an office in Encino where I practice one day a week.
Q. Thank you.

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You said "we." What do you mean by "we"?
A. I'm in a partnership with a number of oncologists and other non-oncologists. It's medical group of 12 physicians right now.
Q. What's the name of the medical group, please?
A. It's Synergy Hematology Oncolgy Medical Associates, Incorported.
Q. Are you a member of any medical organizations that are pertinent to this case?
A. American Society of Clinical Oncology.
Q. Are you affiliated with hospitals here in the Los Angeles area?
A. Yes. A number of them.
Q. Which?
A. Cedars Sinai Medical Center is the main one; Century City Midway Medical Center, Brotman. I also have privileges in the Valley at Valley Presbyterian, at Tarzana and Encino Hospital.
Q. Thank you very much.
Are you the treating doctor for Fredric Reller?
A. Yes.
Q. When is the last time you saw Mr. Reller, please?
A. On June 9th, 2003.
Q. When is the next time you're scheduled to see Mr. Reller, please?
A. After he completes his radiation therapy, which should be about now, I believe.

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Q. How long has he been undergoing radiation therapy, please?
A. I think approximately a month.
Q. How often does he get radiation therapy, please?
A. It's daily except for weekends.
Q. So like today.
A. Yeah, he should be there today. If he hasn't completed already.
Q. When is the first time that you saw Mr. Reller?
A. The very first time was in 2001. It was July 30, 2001.
Q. What were the circumstances by which you saw Mr. Reller then, please?
A. He was referred to me by Dr. David Kattan, who is an internist and cardiologist, and apparently he was -- Dr. Kattan was treating a friend or a relative of the Rellers and he was referred to Dr. Kattan who referred him to me.
Q. Thank you.
When you met with Mr. Reller, did he give you a history?
A. Yes, he did.
Q. When you met with Mr. Reller, was he alone?
A. He was with his wife.

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Q. Did the history come from Mr. Reller, his wife, both? Which?
A. Both, for the most part.

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Q. What history were you given, please?
A. I was given a history that he had lung cancer, but he didn't know exactly what type it was at that time. He was being treated -- he initially presented to Daniel Freeman Hospital with shortness of breath, he was diagnosed there. Apparently because of his insurance status, or lack of insurance, he was referred to the County Hospital for treatment at USC --
MS. WILKINSON: Your Honor?
THE COURT: The jury will disregard that, and insurance has absolutely nothing to do with this case.
Do you all understand that?
JURY RESPONSE: Yes.
THE COURT: Don't mention that word again, Doctor.
THE WITNESS: Okay.
He was referred to USC, where he started treatment there. He was not happy with the surroundings at the County hospital, but he was given good care, and that's when he came to me, after he had eight cycles of chemotherapy at USC.
Q. BY MR. PIUZE: Okay. So that was the history that you took from him. Right?
A. Right.
Q. Did you do an examination?
A. Yes, I did.
Q. How did you do that?
A. Well, basically had him undress, and listened to his heart, lungs, examined his extremities.

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Q. Bad question for me. Let me do it again.
As an oncologist, and Mr. Reller in there for the treatment of cancer, did you do anything beyond what most of us would recognize to be a regular physical examination?
A. Not at that time, because I did not have any other records or films.
Q. Okay. So as a result of the regular physical examination that you did, were there any findings that were noteworthy?
A. The only noteworthy finding at the initial encounter was that his fingers had clubbing, which is a sign of illness, especially of cancer, or lung cancer particularly.
Q. What is clubbing?
A. Clubbing is a change in the fingernails. If you look at your -- a normal fingernail, they're usually like this, a little bit scooped; but with the clubbing, the nail goes into a hump, and it's very noticeable in somebody who has lung cancer or some sort of cardiovascular disease, severe cardiovascular disease.
Q. Was that the only physical finding you made out of the ordinary on the first occasion?
A. On the first occasion, yes.
Q. Before you saw -- let me withdraw that.
What did you do after seeing him the first time? What was your plan? What did you do?
A. Well, when I first saw him I had no medical

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records, no documentation to support anything other than

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what he said, and you certainly don't want to treat somebody with chemotherapy based on a history alone, you need to get at least a report or the tissue and some X-rays.

So we tried to obtain medical records from USC, from the L.A. County actually, that was pretty hard to do, and I had a friend there at the time, so I talked to him about getting the records, and he was able to talk to his treating doctor and get some of the records, and we were able to get the pathology report, the X-ray reports and the treatment records from L.A. County.

Q. Okay. You said you were given the name of his treating doctor. What was that, please?

A. I think it was Dr. Rubin.

Q. Okay. Why did you want pathology reports?

A. Well, although he was already being treated at the County, you obviously want to confirm, you know, as a treating doctor when you're going the give somebody chemotherapy, you want to be certain that you're not giving something harmful and make sure that nobody made a mistake before you. You don't want to rely on just what you have.

Q. Did you get pathology reports only, or pathology reports and the actual slides themselves?

A. No, I only got the pathology reports. The people at the County were very respectable, and I had reviewed the report from Daniel Freeman, so I had two independent confirmations of the pathology at that time.

Q. Okay. Did you get the pathology reports,

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X-rays and medical records at all roughly about the same time?

A. I believe so.

Q. Did you get all of that stuff before you saw Mr. Reller again?

A. I think it was after the third visit that I got everything. I'm not sure.

Q. Okay. So what happened on the second and third visit, then, before you had all of the records?

A. Well, at that time he was clinically stable, he had received quite a lengthy course of chemotherapy, and he actually looked pretty good, he looked stable, and there's no data that by continuing chemotherapy after you've reached a certain point that you're going to get any benefit; he'd reached the point where most people would observe, clinically watching, rather than treating him any further. So that's what we did.

Q. Watching him.

A. Just watch, right.

Q. Make sure he wasn't getting worse.

A. You're right, making sure he wasn't getting worse.

I did do a baseline CAT scan so I would have a baseline.

Q. Okay. So "baseline CAT scan" means what?

A. That I get a picture of what his tumor looks like at the time that I first saw him so I would have something when I do subsequent CAT scans to compare to see

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if the tumor is growing or getting smaller.

Q. When you got the material from County USC Hospital, the records, the path reports, did you get films?

A. No, I did not get the actual films. I was unable to do that. But we were able to get the reports.

Q. Of the films.

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A. Of the films, and then I got my own set of films.
Q. Okay. Were you able to then form a plan of treatment for Mr. Reller?
A. Yes.
Q. Was your form of treatment based upon a specific diagnosis that you were comfortable making?
A. Yes.
Q. What diagnosis was that?
A. Adenocarcinoma of the lung Stage III-B.
Q. And what was it that you got from County Hospital that made you comfortable in diagnosing Mr. Reller with adenocarcinoma of the lung, please?
A. The pathology report.
Q. What about the pathology report made you comfortable in diagnosing Mr. Reller with adenocarcinoma?
A. Well, the exact interpretation by the pathologist, the -- and then you are correlating that with his history and his X-ray findings all fit the diagnosis of adenocarcinoma of the lung.
Q. Were you aware, because Mr. Reller told you, that there had been some indecision originally about whether

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he had mesothelioma or adenocarcinoma?
A. Yes.
Q. Are those two diseases treated differently by you?
A. Yes.
Q. Is that the reason that you -- one of the reasons that you wanted to see all the stuff before you decided how to treat him?
A. Yes.
Q. Because you want to know what to treat him for.
A. Right.
Q. Okay. Are there specific tests that were done down at County, L.A. County USC Med Center, to rule out mesothelioma?
A. Well, yes. They did a number of immunological studies. They test different chemicals on the -- on the cells, on the tissue blocks, look under the microscope, and by different staining patterns they're able to determine the difference between mesothelioma and adenocarcinoma, usually.
Q. Okay. Was the County pathology department report that Mr. Reller had adenocarcinoma?
A. Yes.
Q. Specifically did not have mesothelioma.
A. That's correct.
Q. Okay. What about the medical records and/or X-ray reports backed that up in your view?
A. Yes, they do back it up.
Q. Why?

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A. The pattern of the tumor on the films and the pattern of his response to the chemotherapy and his clinical course.
Q. What was there about the pattern of the tumor on the films that backed it up?
A. Well, he has a large tumor that's what we call near the hilum of the lung.
Q. So, because we're not all familiar with hilums of the lung --
A. Right.
Q. -- let me show you some medical illustrations.

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Did I show you these earlier today?
A. Yes.
THE COURT: Is this the ones that are previously marked, Mr. Piuze, that we had used before with Dr. Hammar?
MR. PIUZE: No.
THE COURT: This is a new set?
MR. PIUZE: Yes.
THE COURT: These need to be marked?
MR. PIUZE: Yes
THE COURT: Okay.
The next number up is 245.
MR. PIUZE: Thanks.

(Exhibit No. 245 was marked for identification)

THE WITNESS: Any of the pictures will do.
Q. BY MR. PIUZE: Were pictures taken on May 8,

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'01, pictures that you would have sponsored?
A. Yes.
Q. Let me start with that one, then, please.
THE COURT: This is 245. And what are we going to call 245, just so I know how to describe it? It's a blow-up of something or other.
MR. PIUZE: It's a medical illustration of adenocarcinoma, 5/08/01.
THE WITNESS: I'm sorry, May 8th would have been County USC. Mine were August.
Q. BY MR. PIUZE: Okay. Well, I already marked it, so here it goes.
A. Okay.
Q. So is that Mr. Reller's chest?
A. That's Mr. Reller's -- that's a depiction of Mr. Reller's chest. And there's a large tumor just above the heart on the left side that's colored yellow and says "4.2 by 4.2 centimeter mass" I believe, from this angle.
MR. PIUZE: Your Honor, with this particular illustration, is it okay if I get the witness to come down with a pointer and --
THE COURT: Of course.
MR. PIUZE: Please.
THE WITNESS: So, this would be the tumor.
MR. PIUZE: Excuse me one second, Doctor. I've got five voting members over here who have to see.
THE COURT: Can you all see? Everybody is nodding their heads.

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THE WITNESS: Okay. So this is the cancer, a depiction of the cancer, this would be the heart, this would be the main blood vessel from the heart they call the aorta, and this is the pulmonary artery, which is a very important structure, and the tumor is right by the pulmonary artery.
And then this is the lung, and this lung should come all the way out to here, but on Mr. Reller there's some fluid in here and there's some tumor deposits down here that's causing the lung to retract from the chest wall, so it's actually decreasing the amount of space in his left lung. So it's pushing on the left lung.
Q. BY MR. PIUZE: So, 4.2 by 4.2 centimeter mass, is that life size right there?
A. Yeah, I guess it's to scale.
Q. Well, I'm not saying it is. I'm asking. I'm not sure.

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A. Yeah, I'm not sure if it's to scale, but that would be about right.
Q. What about 4.2; is that something that --
A. That's about almost two inches. A little bit less than two inches.
Q. Okay.
All right. What is that -- do you see the dark red there? I'm sorry, up further. Yeah, right there.
What is that?
A. This is the aorta. That's the main vessel coming out of the heart.
Q. And was that getting compressed to some extent

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by this tumor?
A. Not really. According to the reports, it's close to, but not compressing the tumor. What's more important is the pulmonary artery, which is very close to the tumor.
Q. All right. Now, here's where we were, I think.
Is the pattern of that particular tumor one of the things that you had in mind when you said that that backs up yet again what the USC pathologist said?
A. This is pretty classical for adenocarcinoma of the lung. It's like a textbook picture.
Q. Okay. In round numbers, over the years, how many adenocarcinomas of the lung have you treated?
A. Probably one a month, one or two a month, so probably 12 a year, over the last five years, about 60 or so.
Q. Okay. Back in medical school and as you've gone through medical school and your residency and your fellowship, how many did you see?
A. During different rotations, I mean, during OB of course you're not going to do any lung, but probably about half that number.
Q. So approaching a hundred or so?
A. Yeah. About that. Rough guess.
Q. How many in your career have you seen where the person with adenocarcinoma of the lung was not a smoker?
A. Two that I can recall.
Q. Okay.

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A. One in medical school, one a few years ago.
Q. Not mesothelioma.
A. Right. Not mesothelioma.
Q. Do you have an opinion as to the cause of Mr. Reller's adenocarcinoma?
A. Well, it's his cigarette smoking.
Q. Not asbestos?
A. Not asbestos.
Q. Let me show you an earlier film, please.
THE COURT: This is 246.
MR. PIUZE: Thank you.
THE COURT: And what do we call this just besides 246? Medical blow-up again or what?
MR. PIUZE: "Adenocarcinoma 11/15/00."
THE COURT: Thank you.

(Exhibit No. 246 was marked for identification)

Q. BY MR. PIUZE: This is from Freeman Hospital, and what I'd ultimately like you to do is show the jury how that changed from one time to another.

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But before you do that, if you could orient us again, I'd appreciate it.

A. Sure. This is the tumor again. This would be -- the pink is the normal lung; this here would be the fluid around the lung; this is the aorta, the important pulmonary artery; this would be the heart; this would be the -- where the air comes through and into the lungs,

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the trachea, and this is the left main stem bronchus.

And then -- so this would be before he got any treatment at all. There's no chemotherapy here, so he's fresh. And at this time he was short of breath, on oxygen, and then after he got chemotherapy at L.A. County his tumor shrunk. We wouldn't call this a significant response, we would call this a response, because it's still about more than half the size of the original tumor, and then up here you see some scarring probably related to the chemotherapy where some tumor died and the lung scarred up.

So between here and here there's a definite change. And at this time Mr. Reller was requiring oxygen therapy, and then by the time this scan was done he was not requiring oxygen, he was walking and he was back to work, I think.

Q. What's oxygen therapy? I know that sounds easy, but. . .

A. Yeah. Well, because of Mr. Reller's compromised lung function on this picture, he was not getting enough oxygen to his body, so he was short of breath, he would have been panting at the hospital when he walked into the emergency room, gasping for air.

With oxygen therapy, basically just giving him more oxygen than normal air through a tube into the nose or into the mouth, he would be able to breathe better, he would be more comfortable.

Q. Thanks.

Why don't I leave the latest one up, ask you

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to go back up to the witness stand if you wouldn't mind, please.

So, where we were, I think, was back in '01 and you'd received the information from LAC/USC Medical Center.

Can you tell us how you followed Mr. Reller and what the changes in Mr. Reller were up until the time that he started taking some active, more aggressive treatment, please?

A. At that time he was doing relatively well, as I said he was not requiring oxygen, he was back to work, and he looked quite comfortable. He had gotten quite a significant amount of chemotherapy at L.A. County, and since he was pretty much very functional at this point there was no point in giving him further chemotherapy. The data suggests that continuing to hit these patients with chemotherapy, you really don't improve their quality of life, nor do you change their length of life. And so we elected to stop chemotherapy and just watch him.

Q. How often did you see him during this watching period?

A. Monthly basis. We would check his labs and examine him.

Q. Can you tell the jury Mr. Reller's general attitude and state of mind about his well-being back at that time?

A. Mr. Reller was very positive, he has a

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very positive outlook on life, and he's actually very hard-working and he always looks at the good side.

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Q. Okay. Typically when he came in, did you see his wife, too?

A. Yes.

Q. Okay. Good enough.

Now, as a general proposition, did his wife worry more about his current state than him?

MS. WILKINSON: Your Honor, I hate to do this, but that's improper and --

THE COURT: It's speculative, it's hearsay.

MR. PIUZE: I'm sorry, your Honor?

THE COURT: It's speculative, it's hearsay. She's not a party, and it's not relevant.

Q. BY MR. PIUZE: Sometimes did you get reports from the two of them that differed as to his symptomatology?

A. Yes.

Q. Typically, did Mr. Reller see himself as being much better off than Mrs. Reller did?

MS. WILKINSON: Your Honor, it's based on the same hearsay, comparing one person's out-of-court statements to a nonparty's out-of-court statements.

THE COURT: Overruled. It goes to his -- it's stricken on the grounds that there's an exception to the hearsay that talks about mental states or physical states.

You can answer the question.

THE WITNESS: Yes.

Q. BY MR. PIUZE: Do you remember the question you just said yes to?

A. Yeah. Her view was different than his view.

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Q. Just so this isn't too torturous, did he see himself better off all the time than she saw him?

A. Yes.

Q. Is that true right up until today?

A. Yes.

Q. When is it that, as a result of following Mr. Reller and doing whatever tests you did on him, that different therapy was instituted, please?

A. Well, we were watching his CAT scans on a periodic basis, and blood tests, specifically his CEA, that was going up, and his tumor was progressing, and at that point for about ten months of following him we started to -- we initiated chemotherapy again.

Q. Okay. Thank you.

When you say his tumor was progressing, does that mean it was progressing to getting bigger?

A. Yes, getting bigger. The tumor was getting bigger.

Q. What's a CEA?

A. A CEA is a blood test that we follow that often is elevated in adenocarcinomas. It's called -- it stands for carcinoembryonicantigen, is the proper name. It's abbreviated CEA.

Q. How does that test give you any kind of a clue as to what's going on, please?

A. It's associated with tumor burden or tumor bulk, so the more disease you have, typically the CEA is elevated. If you treat it and the tumor load goes down,

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the CEA usually drops. So it's a good indicator of the activity of the cancer, how much tumor you have.

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Q. Thank you.
Earlier on in my questioning you mentioned that when Mr. Reller came to you, he described that he had gone through a course of chemotherapy at USC County Hospital.
Do you remember that?
A. Yes.
Q. I don't know if "course" is the right term, I think that may be, but what is a course?
A. Well, he had a defined treatment plan which at County USC was eight cycles, so every month he would get chemotherapy, doses of drugs, for eight sessions. It doesn't mean that eight times -- each session may be two or three injections of the particular drug, and for Mr. Reller he got two drugs initially, gemcitabine and cisplatin on day one and day eight repeated every month.
THE COURT: I hate to do this to you, but that nice man sitting in front of you I know is going to need the spellings on that.
THE WITNES: Gemcitabine is g-e-m-c-i-t-a-b-i-n-e, and cisplatin is c-i-s-p-l-a-t-i-n.
So he received six courses of that, at which time his kidneys started to weaken and they changed the cisplatin to carbolplatin, c-a-r-b-o-l-p-l-a-t-i-n, and then they stopped.
Q. BY MR. PIUZE: So each course is day one and day eight?

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A. Right. And then you wait for about a week or two for the body to recover and you repeat. So about -- each course is -- each cycle is about a month. And they gave him what we call one course of chemotherapy over an eight-month period of time.
Q. So let me just go back to cycles so I can be sure I've got it right.
Is each cycle going to the hospital two times to get injected with drugs?
A. With that particular treatment, yes.
Q. Okay. And when you go to the hospital to get injected with drugs, it's different drugs. Two in this case.
A. Right.
Q. And then you wait awhile, and then you go back and do it again.
A. That's right.
Q. Six different times.
A. Well, his was eight.
Q. Eight different times.
A. Yeah.
Q. Okay. When did you -- are there side effects to this stuff, by the way?
A. Yeah. Significant.
Q. Such as?
A. Well, in Mr. Reller's case, his kidney function started to deteriorate after six cycles of cisplatin, which is not unusual. Cisplatin also makes you -- it's one of the

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most intensive drugs for nausea and vomiting, so nausea and vomiting can be very intense with cisplatin, hair loss, hearing loss. The gemcitabine would reduce his immune system, his blood counts would drop. So it's pretty significant.
Q. Hearing loss is one of the side effects?
A. Potential, right.

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Q. Okay. What drugs did you use?
A. I started him on a drug called Taxotere. T-a-x-o-t-e-r-e.
Q. Where did he receive the treatment?
A. In my office.
Q. Was it the same idea: day one and day eight again, then?
A. No. I gave him weekly lower dose over a four-week period with a one-week break, so he would get three doses, week one, week two, week three; week four he would have a break and then restart.
Q. Are there side effects to that medicine?
A. Yes, but typically by doing it in this fashion they're very mild.
Q. And were they mild for Mr. Reller?
A. Yeah. Pretty much mild. He was able to work.
Q. Did he get better?
A. Well, during the chemotherapy he was. At the end of chemotherapy he started to get fatigued, which is not unusual with the Taxotere. But in some regards he was better. He reported his stamina was better.

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Q. How does that work? How do these drugs affect stamina?
A. Well, if the drug is working and the tumor is shrinking, then the patient should start to feel better. And with Mr. Reller, if his lung cancer is decreasing, he should be able to breathe better.
Q. Was that the case?
A. That was his subjective report, that's right.
Q. Subjective report meaning he said: Thanks a lot, Doctor, I feel better?
A. Yeah. Right.
Q. When did that treatment end, please?
A. The last chemotherapy was on October the 11th, 2002.
Q. So, as far as your chemotherapy treatment, it went from when to when, please?
A. First dose was May 7th, 2002, and the last dose was 10/11/2002. He got 18 doses of Taxotere.
Q. Thank you very much.
And during that time, were there any significant side effects reported to you?
A. Yes.
Q. What?
A. He developed a deep vein thrombosis or blood clot in his left leg.
Q. Is thrombosis another way of saying blood clot?
A. Yes.
Q. What's deep vein as opposed to vein?

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A. Superficial vein?
Well, deep veins are very important because they go straight up to the body, up into the lungs, and it can be fatal if the clot moves up from the deep vein.
So if it breaks off in the leg and goes up into the lungs it could be fatal or near fatal.
Q. Is deep vein thrombosis a kind of common result of the disease and/or the treatments?
A. Yes.
Q. Which?
A. Both.
Q. Both.

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Did the fact that Mr. Reller had deep vein thrombosis mean anything to you as far as your diagnosis of adenocarcinoma is concerned?
A. It's very common with adenocarcinoma.
Q. Is deep vein thrombosis a worrisome thing?
A. Yes. It's life-threatening.
Q. What did you do about it?
A. We thinned his blood with initially a drug called heparin and then we put him on Coumadin.
Q. And why do blood thinners help in that situation?
A. They break up the clot so it doesn't get bigger and propagate and move.
Q. Do the blood thinners themselves, heparin and Coumadin, have side effects?
A. Yes, they do.

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Q. What?
A. Bleeding. You can thin the blood so much that they start bleeding.
Q. Is one of those related to cobra venom?
A. Yes.
Q. Coumadin?
A. No. The heparin -- there's a heparin-like drug that's like cobra venom.
Q. Anyway, the drug can make you bleed to death.
A. Right.
Q. So you've got to watch it pretty carefully?
A. That's right.
Q. Did you?
A. Yes.
Q. How?
A. Well, with Coumadin, you check a blood test called protine (phonetic) and INR that tells you whether you're too thin or not thin enough. You have to be right in the middle.
Q. And when you say whether you're too thin, you mean whether your blood is too thin?
A. Whether his blood is too thin or too thick.
Q. Okay.
Anyway, did you get him to a point where you thought you were happy with the way it was?
A. Yes, we did.
Q. When was that, please, roughly?
A. Roughly within a few weeks after starting

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therapy. After the Coumadin.
Q. And when was that, please?
A. I think by about July 2002 we were happy with his -- with his level.
Q. Thank you.
Between July 2002 and the time that that second chemotherapy -- tell me the word again?
A. Completed? Cycle.
Q. Cycle. Thank you.
A. Course.
Q. Course?
A. Course.
Q. Completed?
A. Yeah.
Q. Were there any other side effects that were -- I mean major side effects that were noteworthy?
A. Not until after the completion of his

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chemotherapy.
Q. Were you happy with the way Mr. Reller was coming along?
A. As far as the CEA, but not as far as the CAT scan.
Q. Explain that, please.
A. His CEA dropped, so the -- it is seemed that he was doing better by his blood tests, but the CAT scan showed just a stabilization of disease; it didn't show worsening, but it didn't really show a regression. It just showed stable disease.

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Q. Meaning the tumor wasn't getting bigger or smaller.
A. Right. Which is a response.
Q. It ain't getting worse.
A. Right. It's not getting worse.
Q. Yeah, don't use my grammar.
That's not bad, is it, that it's not getting worse?
A. Right. That's. . .
Q. Okay. Sometime after that course of chemotherapy ended, did Mr. Reller run into some problems?
A. Yes. I believe in January of 2003 he started bleeding.
Q. And what does that mean, bleeding? What, when, how, where?
A. He started urinating blood, and he went to the emergency room I think at Daniel Freeman at that time, and I was called in the middle of the night, so. . .
His Coumadin level was too high.
Q. What did you do about that, please?
A. We stopped the Coumadin and the bleeding stopped.
Q. And did he stay off of Coumadin?
A. He stayed off of Coumadin at that time. He completed six months of Coumadin, his treatment with -- his chemotherapy had stopped, and because of his bleeding I thought it was safer not to continue it at that point.
Q. Okay. After the chemotherapy stopped the

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second time, how often did you see Mr. Reller, please?
A. Monthly.
Q. And still was his wife a regular companion to your office?
A. Yes.
Q. What's the next event that happened in his treatment, course, treatment history, that's significant, please?
A. In March he called me one day, he was short of breath, and I had him come to the office and we admitted him. It wasn't obvious on the initial examination why he was more short of breath, obviously things come into your mind: tumor or other possibilities, pneumonia or blood clots, and so we admitted him for a work-up at that time to Cedars Sinai.
Q. Okay. And the work-up consisted of what, please?
A. He had a chest X-ray that didn't really -- initially didn't show much, he was put on oxygen, and we got a CAT scan of the chest, and it showed that he had pulmonary embolism, a blood clot in the -- that went from the legs up into the lungs.

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Q. So that's the thing you were talking about before.
A. That's right.
Q. Potentially fatal.
A. Potentially fatal, right.
Q. Let me show you 247.

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THE COURT: And 247 is a what? Another blow-up. And how shall I label it?
MR. PIUZE: Placement of filter, 3/24/03.
THE COURT: Thank you.

(Exhibit 247 was marked for identification)

Q. BY MR. PIUZE: In case I didn't ask you previously, can you confirm that the two medical illustrations we've seen so far are accurate medical representations of what it looked like inside of Mr. Reller?
A. Yes.
Q. I'm going to show you this 247. Is this an accurate medical -- it would be accurate if I held it up right -- representation of what was going on inside of Mr. Reller at this point?
A. Yes.
MR. PIUZE: Your Honor, if it's okay, I'd like to ask the doctor to step down.
THE COURT: Sure.
MR. PIUZE: The last time I hope. Please.
Q. Can you explain to the jury what's going on there; what the problem was, how it originated and how it was fixed, please.
A. Right. Earlier on when he was getting chemotherapy he developed --
Q. Excuse me for one second. One more time so

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it's possible for them to see. Yeah.
A. Sorry.
THE COURT: You can all see now; hmmm? Can you all see? Everybody is nodding their heads yes.
THE WITNESS: Okay. So originally while he was getting chemotherapy, when I gave him chemotherapy --
MR. PIUZE: Hang on one second. We've got all these high-priced gadgets here, we might as well get this right. Is that level about there? That's good.
THE WITNESS: Okay. So initially when he was getting chemotherapy, when I was treating him, he got a blood clot in his leg, which is depicted right here, which would make his leg swell up, and then he was treated and presumably that went away.
Then in March he came in short of breath, and at that time he developed a blood clot in his leg again, and that blood clot would have traveled up his body through -- this is the inferior vena cava that drains into the heart, it would have gone into the right side of the heart and would have been pumped right into the lungs, so it would have gone like this and into the lungs, and this blood clot in the lungs prevents blood going to the lungs, so he gets decreased oxygenation to the body, so he's short of breath again, but from a different cause, this time it's not tumor, this time it's a blood clot that's causing him to be short of breath, and if this is untreated, it's fatal.

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Q. BY MR. PIUZE: How does it become fatal?
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A. You get more blood clots just choking off both lungs, eventually you can't breathe and you die. You die of asphyxiation, basically.
Q. So how was it decided to treat his condition?
A. He was put on blood thinners again, heparin and Coumadin.
Q. Did they work?
A. They worked. He got better. He was able to breathe again.
Q. Was that done before this placement of the filter?
A. That's right.
Q. Why was the filter placed, please?
A. Because despite the therapy with heparin and then eventually Coumadin, he got another blood clot into the lung again on blood thinners.
Q. Was he actually hospitalized twice during this time?
A. Yes. He was sent home after the initial anticoagulation and then readmitted shortly after.
Q. Roughly how long was each of those hospitalizations?
A. I think the first one was a week and the second one was a week, approximately.
Q. What's the purpose of a filter?
A. The filter is placed in the inferior vena cava, and so if further blood clots come up, it's hoped that this filter will break up the blood clots, so if they're small
7642
enough, they can go through the lung without damaging the lung.
Q. You didn't do that, did you?
A. No, I didn't.
Q. A surgeon did?
A. The radiation -- the radiologist, interventional radiologist puts them in.
Q. Has it worked?
A. So far as we know, it worked.
Q. And because of the way you answered the question, does that mean it might not work?
A. It might not work, that's right.
Q. Why?
A. Well, these filters can migrate up, sometimes they can develop new blood vessels that bypass these channels, so he could make a new vein presumably that goes from here to there and bypass the filter with time. So a blood clot can find a new route to the heart and the lungs, bypassing the filter.
Q. Back to a potentially fatal condition.
A. That's right.
Q. Is this the best that our medicine can do now for Mr. Reller?
A. This is the best that we can do at this time, right.
Q. Roughly how long has it been since Mr. Reller was out of the hospital the second time?
A. Well, he was admitted a third time after this.
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Q. Was he. How come?
A. Even after we put the filter in, his leg started to swell again, although we stopped the -- we put

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him on Lovenox again to -- he failed the Coumadin, the blood thinner pill, so we put him on Heparin for his leg, because this filter doesn't do anything for the leg and his leg was swelling, so the third time he was admitted because he was coughing up blood.

Q. Roughly when was that?

A. April. I can give you the exact dates if you want them.

Q. Where was he admitted to?

A. Cedar Sinai.

Q. For roughly how long?

A. I think four days. Three or four days.

Q. These three hospitalizations, were they within the space of like a month, say?

A. Yeah. From March to April, yes.

Q. Okay.

So, since then have you continued to follow Mr. Reller?

A. Yes.

Q. How's he been doing?

A. Well, he's doing better. He stopped coughing up blood with the radiation.

Q. Why is he getting radiation?

A. He's coughing up blood presumably because the tumor is probably -- on the prior picture, this

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pulmonary artery is very close to the tumor, so I suspect the tumor is eating into the pulmonary artery, which is the main blood supply to the left lung, and so by radiating this area we can hopefully shrink the tumor in that spot so he won't cough up blood.

MR. PIUZE: Let me show you 2 --

THE COURT: The next number up is 248.

MR. PIUZE: 248.

THE COURT: And that's another blow-up?

MR. PIUZE: It is.

THE COURT: What should I entitle this blow-up?

MR. PIUZE: "Progressive disease 4/29/03."

THE COURT: Thank you. Okay.

(Exhibit No. 248 was marked for identification)

Q. BY MR. PIUZE: Dr. Qasabian, is that also an accurate medical representation of what Mr. Reller looked like inside on that day?

A. Yes.

Q. What's happened to the tumor, please?

A. The tumor is bigger. This is all tumor, scarring from tumor. The pulmonary artery is here. This looks like the right main stem -- left main stem bronchus, the air tube going to the lung. So the tumor is very close to the pulmonary artery, although on this picture in this rendition it looks like it's not eating the artery. We suspect that microscopically if you looked in there or

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if you opened him up and looked inside, it's probably involving the artery.

Q. Who decided on radiation therapy?

A. The radiation therapist and I. It was a mutual decision.

Q. Why radiation therapy as opposed to more chemotherapy?

A. Some people may opt for chemotherapy. In

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this, we felt that it was the least harmful way to treat this disease. I mean, we're trying to -- for Mr. Reller, our goal is comfort, palliation, prolongation of life. We're not trying to cure him. We know we can't cure him. So we're doing the best for him without hurting his lifestyle, basically. We're trying to get him to live as long as possible and as comfortable as possible.

Q. Did you discuss these facts with Mr. Reller, too?

A. Yes.

Q. Were those his wishes?

A. Yes.

Q. So, let me see if I can ask you some questions and read between the lines a little.

Would chemotherapy maybe be more aggressive toward the -- a third dose of chemotherapy maybe be more aggressive toward the tumor, but maybe make Mr. Reller feel crummy?

A. It could be, but probably a third round, a third cycle of chemotherapy is going to be much less

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effective than radiation.

Q. Okay.

A. You kind of lose your effect with time.

Q. If I told you, gave you a concept of dropping a ball, a rubber ball, it bounces once, it bounces twice, each time it doesn't bounce back quite so far, are you familiar with that concept?

A. Yeah. That would be Mr. Reller.

Q. Would that apply to your cancer patients?

A. Yes. They tend to bounce back each time after some intervention, but not to the function that they were before the -- that insult. So with each time they get worse and worse, weaker and weaker.

THE COURT: All right. Ladies and Gentlemen of the Jury, you are admonished that it's your duty not to converse among yourselves or with anyone on else on any subject connected with this trial or to form or express any opinion thereon until the cause is finally submitted to you.

I'll see the jurors and doctor back at 12:16. That's 12:16.

Counsel, could you just stay a minute? I need to talk about scheduling with you off the record.

(Recess taken)

[End of A.M. Session of Transcript]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE

- - -

FREDRIC RELLER, )
)
Plaintiff(s), )
)
vs. ) Case No. BC261796
)
PHILIP MORRIS INCORPORATED, )

http://legacy.library.ucsf.edu/tid/bqq37a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/yqgl0001

a corporation, et al., )
)
Defendant(s). )

I, TIMOTHY J. McCOY, CSR No. 4745, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 7520 through 7646, inclusive, comprise a full, true and correct transcript of the proceedings held in the A.M. Session of the above-entitled matter on Friday, June 27, 2003.

DATED THIS 30TH DAY OF JUNE, 2003.

TIMOTHY J. McCOY, CSR NO. 4745
OFFICIAL REPORTER

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